

# DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION



Report to the

## **House Committee on General Laws & Senate Committee on General Laws and Technology**

*Department of Professional and Occupational Regulation Study of  
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 pursuant to  
Senate Bill 740 (2022)*

April 3, 2023



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This report would not have been possible without the participation and input of members of the SB 740 Work Group, staff at the Department of Professional and Occupational Regulation, and individuals who generously offered their time, provided access to data and information, and shared their insights related to the many issues covered by the scope of this review. The research team deeply thanks all of these individuals.

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# Foreword by the Director

The following report contains a breadth of conceptual policy recommendations developed by members of the legislatively prescribed work group, established by Senate Bill 740 in 2022, representing a broad spectrum of expertise in their respective fields. These recommendations should serve as an impetus to inform discussions surrounding whether public policy is necessary for the protection of the health, safety, and welfare of Virginia’s citizens residing in common interest communities, specifically as it pertains to the structural integrity of shared capital components.

Increasing the supply of attainable, affordable, and accessible housing across the Commonwealth is a priority of Governor Youngkin’s administration. Common interest communities play a vital role in providing housing solutions contributing to increased housing supplies and decreased costs.

The recommendations contained in the report should be evaluated from a macro perspective as they pertain to Virginia’s housing environment. It is imperative any subsequent law, regulation, or policy does not directly or indirectly increase the overall cost of housing, increase the regulatory burden on common interest communities, or increase the exposure of common interest communities to legal liability. Any resulting prospective public policy should be extensively evaluated to ensure it is the least restrictive means necessary to protect the public and is a proven, precise and evidence-based solution.

I look forward to continuing to work with policymakers and other stakeholders. I commend the efforts of this work group and appreciate their contributions to this important policy issue.

Demetrios J. Melis, Director  
Virginia Department of Professional and  
Occupational Regulation

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# Introduction

## SENATE BILL 740 (2022) OVERVIEW

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Chapter 421 of the 2022 Virginia Acts of Assembly (Senate Bill 740) required the Department of Professional and Occupational Regulation (DPOR) to convene a Work Group to study the adequacy of current laws pertaining to standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. At the conclusion of the study, DPOR was required to report Work Group findings and provide recommendations, including 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.

### SCOPE OF STUDY

Topics considered by the Work Group, as Senate Bill 740 mandated, include:

- 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;
- Governing documents;
- 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;
- Budget requirements;
- 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;
- Liability of associations and executive boards;
- 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;
- Insurance coverage, including the scope of coverage, availability of products, adequacy or need for new or alternate products, feasibility of insurance inspections, and cost;
- Education of association board members and owners;
- Judicial remedies, including an option to petition a court to authorize an assessment or alternative funding; and
- Common interest community association management, including manager qualifications and self-management versus professional management.

## WORK GROUP MEMBERSHIP

Senate Bill 740 specified the composition of the Work Group:

- Common Interest Community Board member(s);
- Representatives of local governments;
- Local and state building officials;
- Common interest community property owners;
- Developers and builders;
- Common interest community managers;
- Community association attorneys;
- Reserve specialists;
- Professional engineers;
- Auditors;
- Representatives of financial institutions;
- Insurance professionals;
- Attorneys with experience representing individuals with property or personal injury claims;
- Office of the Common Interest Community Ombudsman; and
- Volunteer community leaders.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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DPOR is an executive branch agency that oversees 18 regulatory boards and programs. DPOR's policy boards—plus the Board for Professional and Occupational Regulation (BPOR)<sup>1</sup>—are comprised of practitioners and citizens appointed by the governor, and are responsible for regulating certain professions and occupations, as determined by the General Assembly.

DPOR issues professional credentials—licenses, certificates, or registrations—in the least intrusive, least burdensome and most efficient way. The agency's goal is to ensure the minimum competency necessary to practice without harming the public. Policy boards determine the minimum standards necessary to enter a profession, and qualify applicants based on a combination of education, experience, and examination. DPOR's employees serve more than 300,000 individuals and businesses across several hundred license types, ranging from architects and contractors to cosmetologists and professional wrestlers.

DPOR's regulatory boards represent varied and diverse expertise and perspective; however, given the broad scope of this study and the responsibility typically authorized to the boards to

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<sup>1</sup> BPOR is a nine-member policy board appointed by the Governor to, among other things, advise the Governor and the DPOR Director on matters relating to the regulation of professions and occupations (see § 54.1-310 of the Code of Virginia). BPOR did not contribute to or review this report as SB 740 specifically referenced DPOR's and the Work Group's roles in this study and report.

develop policy, DPOR relied on the Work Group member experience and subject-matter knowledge coordinated and curated by the academic facilitator whose research and presentation of relevant information and data in development of the recommendations presented in this report.

## Background

### COMMON INTEREST COMMUNITIES (CICs) AND THEIR CHARACTERISTICS

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Throughout the United States various forms of real property ownership have emerged in which multiple homeowners agree to share common ownership of and responsibility for real property have emerged for mutual benefit and enjoyment. Localities have required and developers have desired communities governed, administered, and operated by an association to, among other things, create neighborhoods, increase density, comply with local zoning and proffer requirements, and allow neighbors to establish shared services, facilities and expenses, take advantage of and benefit from economies of scale, and sustain and enhance property values.

In Virginia, developments of this type are called *common interest communities* (CICs)<sup>2</sup>. CICs are administered and governed by one of the following: property owners' association, condominium unit owners' association, or proprietary lessees' association (in a real estate cooperative). Generally, in a CIC individuals own a lot or unit in the community and have shared ownership with other owners or easements and rights of use in the remaining real property, the *common area or common elements*. Real estate cooperatives are somewhat different in that the real property is owned by a corporation, and the membership of the association is made up of proprietary lessees, who are entitled to exclusive use and possession of a unit through a proprietary lease.

CICs have three general characteristics:

1. Property is subject to *governing documents* that organize the community, provide for the administration and governance of the community and common area or common elements through an association, and establish the rights and obligations of the association, individual owners, and the association's governing board.
2. By virtue of ownership, membership in the association is mandatory and automatic.
3. CIC members are required to pay *assessments* to fund the association and maintain the property.

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<sup>2</sup> The term homeowners' association (HOA) is often used to refer to such developments. However, HOA is not a specific common ownership property regime established in Virginia law.



## CAPITAL COMPONENTS IN CICs

In a CIC, responsibility for maintenance and upkeep of the property is established by the community's governing documents. Generally, these responsibilities are divided between the association and the individual lot or unit owners. Items that the association is obligated to maintain, repair, and replace, regardless of whether such items are part of the common area or common elements, and for which the association governing board has determined funding is necessary, are called *capital components*.

The number and nature of capital components vary from community to community<sup>3</sup>. For some communities there may only be a few components, such as a shared road or entrance feature, signage for the community, and landscaping. Other communities may have significantly more components, including structures such as parking garages or recreational facilities (e.g. exercise rooms, pools, tennis courts, community building). In addition, communities may have entrance features, open space, roads, dams, and stormwater management facilities that might take the form of a pond or other waterway in the community. Common area or common elements can be the responsibility of the association.

## RESERVE FUNDS AND RESERVE STUDIES

To ensure capital components are properly maintained, repaired, and timely replaced, associations establish a *reserve fund* consisting of a budgeted portion of monies collected from assessments imposed on lot or unit owners. Funds in reserve are set aside for the dedicated purpose of paying the costs to repair and replace capital components when the need arises. In this sense, a reserve fund is like a "piggy bank." By establishing and funding a reserve, associations can lessen the potential of having to impose costly special assessments to pay for repairing or replacing capital components.

Virginia law requires the governing board of an association to conduct a study, called a *reserve study*, periodically to determine the necessity and amount of reserves required to repair, replace, and restore the capital components. A reserve study is a capital budget planning tool used to determine the physical status and repair or replacement cost of a community's capital components, and an analysis of an association's funding capacity to maintain, repair, and replace capital components.

Sections 55.1-1826, 55.1-1965, and 55.1-2147 of the Code of Virginia provide, in part:

*Except to the extent otherwise provided in the [governing documents], the [governing board] shall:*

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<sup>3</sup> A list of components that are typically part of common areas or common elements may be found in the CIC Board's *Guidelines for the Development of Reserve Studies for Capital Components* (see Appendix J to this Report). This list is not exhaustive, and does not reflect every type of component that may be found in a community.

- 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 [applicable section of the Code of Virginia];*
- 2. Review the results of that study at least annually to determine if reserves are sufficient; and*
- 3. Make any adjustments the [governing board] deems necessary to maintain reserves, as appropriate.*

In addition, these provisions in the Code stipulate that:

*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 [applicable section of the Code of Virginia];*
- 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.*

Because an association governing board has a fiduciary duty to steward association funds and property, establishing a reserve fund and making adequate provision in the association budget for reserves is important. The information provided by a reserve study helps association members understand the physical condition of the property, and the financial condition of the association, in order to allow for adequate financial planning. A reserve study can serve as an important guide for the association to balance and optimize long-term property values and costs for members, because reserve planning helps sustain property values by protecting against decline in value resulting from deferred maintenance and inability to keep up with aging components.

By establishing a reserve fund and maintaining sufficient reserves, a governing board can reduce the need to impose special assessments on association members when capital components must be repaired or replaced, particularly if the replacement cost is significant. Even if a community only has a limited number of capital components, such as a simple road or driveway, setting aside funds in advance will help guard against financial shock when repair or replacement is needed. Establishing and maintaining a reserve fund also allows for a more equitable financial balance between newer owners in a community and existing owners rather than burdening newer owners with the cost to repair or replace older components in the community. Methodical, consistent reserve contributions reflect stable financial planning.

Under applicable law, CICs are required to conduct a reserve study; however, CICs are not required to establish a reserve fund or to fund reserves.

Reserve studies have two components: (i) a physical analysis and (ii) a financial analysis. The physical analysis provides information about the physical status and the repair or replacement cost of the components the association is obligated to maintain. The physical analysis entails conducting an inventory of components, an assessment of component condition, and life and valuation estimates. The financial analysis evaluates association reserve income and expenses, by examining the reserve fund status, measured in cash or as percent funded, and recommending an appropriate contribution for the fund.<sup>4</sup> Members of an association governing board must decide whether to conduct a reserve study on their own, or hire qualified professionals to perform the task. Some associations elect to hire outside consultants to perform certain tasks, but not others.

## STUDY METHODOLOGY

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Beginning in the spring of 2022 following the Governor's approval of SB 740, DPOR began working with stakeholders, including professional organizations, industry professionals, legislators and others to identify members for the Work Group, ensuring broad representation of stakeholder groups, geographic diversity, and committed volunteers. The Work Group membership was finalized on July 13, 2022, and the first meeting scheduled for August 5, 2022.<sup>5</sup>

### FACILITATION AND RESEARCH

Because of the broad scope of the Work Group's charge and its membership, and to ensure a complete and comprehensive review as SB 740 provides, DPOR contracted with the Center for Regional Analysis (CRA) at George Mason University to provide research and technical support. Additional support was provided by the Virginia Center for Housing Research at Virginia Tech, and the Dragas Center for Economic Analysis and Policy at Old Dominion University as part of CRA's team. CRA and the CRA team provided support by structuring Work Group meeting agenda; defining the scope of review; facilitating meetings of the Work Group, including providing meeting space for most of the Work Group's meetings and other logistical support; conducting a review of academic and professional literature and research on the issues identified in SB 740; conducting interviews of stakeholders and other key informants;

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<sup>4</sup> More information regarding reserves studies and how reserve studies are conducted may be found in *Guidelines for the Development of Reserve Studies for Capital Components* at Appendix J to this Report.

<sup>5</sup> See Appendix B for Work Group Membership and Meeting Schedule.

conducting a survey of CICs; and preparing the Work Group’s preliminary report of findings and recommendations.

**WORK GROUP MEMBERS**

The Work Group consisted of 25 members with at least one individual representing each of the areas identified in SB 740. The following individuals participated as active members of the Work Group:

**Lucia Anna “Pia” Trigiani**  
 MercerTrigiani  
*CIC Association Attorney*  
**WORK GROUP CHAIR**

<b>Walter Alcorn</b> Fairfax County Board of Supervisors <i>Local Government</i>	<b>Jon Bach</b> Community Management Corporation-An Association Company <i>CIC Manager</i>	<b>John “JB” Bailey</b> Woodlake Community Association <i>CIC Manager</i>
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<b>Michelle Baldry</b> Reserve Advisors <i>Reserve Specialist</i>	<b>Gary L. Beveridge</b> Beveridge & Akers Insurance Group <i>Insurance Professional</i>	<b>Jeffrey Brown</b> Department of Housing and Community Development <i>Local/State Building Official</i>
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<b>Steven Y. Brumfield</b> Toll Brothers <i>Developer Representative</i>	<b>Ron Clements</b> Chesterfield County Building Official <i>Local/State Building Official</i>	<b>Walter “Walt” Diercks</b> Lake of the Woods Association <i>CIC Property Owner</i>
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<b>Mark D. Dix</b> Virginia Trial Lawyers Association <i>Property and Personal Injury Claims Attorney</i>	<b>Lee Frame</b> Orange County Board of Supervisors <i>Local Government and Volunteer Community Leader</i>	<b>Heather Gillespie</b> Department of Professional and Occupational Regulation <i>CIC Ombudsman</i>
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<b>Colin A. Horner</b> Rotonda Condominium Unit Owners’ Association <i>CIC Manager</i>	<b>Kimberly B. Kacani</b> Consultant <i>Volunteer Community Leader</i>	<b>Erin Kormann</b> Virginia Realtors <i>CIC Property Owner</i>
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<b>Rafael A. Martinez</b> Virginia Partners Bank/ Maryland Partners Bank <i>Financial Institution</i>	<b>Theresa Melson</b> USI Insurance Services LLC <i>Insurance Professional</i>	<b>Phoebe E. Neseth</b> Community Associations Institute <i>Volunteer Community Leader</i>
<b>Edward J. O’Connell, III</b> Whiteford Taylor Preston LLP <i>CIC Association Attorney</i>	<b>John Olivieri</b> Associated Development Management Corp <i>Developer</i>	<b>Phoebe Rolen</b> Watergate at Landmark Condominium Unit Owners’ Association <i>CIC Property Owner</i>
<b>Anne Sheehan</b> Goldklang Group, CPA & PC <i>Auditor and CIC Board Representative</i>	<b>Chris Stone</b> Clark Nexsen <i>Professional Engineer</i>	<b>Lynette Wuensch</b> EPR, PC <i>Reserve Specialist</i>

**WORK GROUP MEETINGS**

The Work Group held five in-person meetings across the Commonwealth with its primary focus to study the issues as directed by the General Assembly in SB 740, and providing recommendations that would have the greatest positive impact on protecting health, life, and property for citizens in CICs. The Work Group, prompted by Work Group members, intently remained focused on the study scope defined in SB 740. Initial meetings included subject matter briefing, education and research findings along with break-out sessions that created the opportunity to delve more deeply into specific, relevant topics. Later meetings honed in on the specific findings and development of the recommendations to be presented by the Work Group for DPOR to report. The Work Group remained on task and purpose.

**SURVEY OF VIRGINIA COMMON INTEREST COMMUNITIES**

In addition to the Work Group meetings and interviews conducted with individual Work Group members, CRA also developed and administered a survey to gather additional data from CIC associations in the Commonwealth. Using DPOR’s list of associations registered with the CIC Board, the survey was distributed to 2,696 unique email addresses. CRA administered the survey using the Qualtrics online survey platform. The survey was open from January 6, 2023, to January 27, 2023. Since professionally-managed associations often have the email address of their CIC manager as the point of contact, managers were asked to complete one survey for each association managed. CRA received 361 total responses by the deadline, representing a 12% response rate. More detailed information on the survey may be found at Appendix H to this report.

The following reports the findings and recommendations of the Work Group with background materials that support group deliberations. This report is compiled by the CRA team, but all recommendations related to legislative actions explicitly reflect the views of the Work Group.

The Work Group conclusions follow a rule of consensus. Work Group member consensus was solicited on each finding and recommendation. Work Group deliberations were lively and intentionally focused on confirming that findings included only real and documented areas for concern, and that the recommendations were necessary and reasonable, least intrusive solutions to identified concerns. The Work Group invested significant time in wording findings and talking through recommendations. Additional data and information are appended to this report.

## Findings and Recommendations

In accordance with the requirements of SB 740, the Work Group presents its findings and recommendations for legislation and administrative action to be taken to improve current standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. Work Group recommendations are generally organized according to the specific issues enumerated in the legislation that outlined and mandated questions the Work Group was charged to consider.

Each recommendation is shown in **bold type** and followed by a brief narrative explaining the Work Group's reasoning and the relevant supporting information as determined by the Work Group. The first two recommendations reflect general considerations for potential legislative action in response to the Work Group's recommendations.

### GENERAL FINDINGS AND RECOMMENDATIONS

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**Recommendation: Any new legislation should consider amendments to definitions included in existing law to reflect any changes that may come from the recommendations.**

Definitions are a critical part of any legislation and amending statutory and regulatory definitions is of vital importance to clarity and application; this includes existing terms found in statute. The Work Group discussed the terms *capital components*<sup>6</sup>, *reserve study*<sup>7</sup>, *coastal*

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<sup>6</sup> The Code of Virginia provides a definition for *capital components* in § 55.1-1800 of the POA Act; § 55.1-1900 of the Virginia Condominium Act, and § 55.1-2100 of the Real Estate Cooperative Act. The definitions are substantially the same.

<sup>7</sup> Although the POA Act, Virginia Condominium Act, and Real Estate Cooperative Act require an association to conduct a reserve study, there is no definition for *reserve study* in these statutes. A

contexts, and *structural component* as being particularly relevant. The Work Group has suggested a possible definition of “structural component” in Section VII.

**Recommendation: Consideration should be given to allow an association the appropriate time needed to come into compliance with any new legislation.**

The Work Group discussed that any legislation contain a well-defined time period to allow for the least burdensome impact of achieving compliance. The Work Group recognized that allowing increased reserve funding over time is essential.

## I. DEVELOPMENT OF COMMON INTEREST COMMUNITIES

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SB 740 excerpt: *(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;*

**Recommendation: The Commonwealth of Virginia should require developers to provide record plans<sup>8</sup>, 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.**

Section 55.1-1804 of the POA Act and § 55.1-1943(H) of the Virginia Condominium Act each require the declarant (developer) to provide certain documents to the association upon transfer of control of association operation and governance from the declarant to owners. Among the documents required to be transferred are “...a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available...”

Building plans and changes to those plans become reference documents for maintenance and repair, renovation or modification and inspections. The Work Group discussed additional requirements such as “as-built” plans as being ideal, but too costly and not providing major value beyond building plans, so long as those plans include any significant field adjustments (changes made during the construction of units and common spaces).

The Work Group also discussed the possibility of developers providing a comprehensive maintenance manual at turnover as suggested by Berding (2005), but determined that a more comprehensive reserve study (Section III) would provide information essential to governing boards and owners for associations to undertake regular maintenance and repair. In addition,

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definition of this term may be found in the CIC Board’s *Guidelines for the Development of Reserve Studies for Capital Components*. (See Appendix J to this Report.)

<sup>8</sup> Record plans are not “as-built” plans. Record plans are those submitted to the municipality to receive a building permit. Plans include all those approved by the municipality as well as changes and significant field adjustments.

the Work Group recommended enhanced attention to CIC performance of appropriate maintenance and repair activities by suggesting that funding reserve contributions be mandated (Sections IV and VI) and that additional educational resources be disseminated more broadly (Section IX).

## II. GOVERNING DOCUMENTS

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SB 740 excerpt: *(ii) governing documents;*

**Recommendation: No statutory or regulatory changes recommended.**

The Work Group made a number of recommendations that may affect governing documents as those recommendations relate to administration, financial operation, and management of associations, which are typically defined in association governing documents. Because these recommendations specifically address reserve funding, the recommendations are included in Section IV (budget requirements) and Section V (board authority, special assessments, and borrowing). Work Group members discussed the vintage and variety of governing documents, some of which are silent on actions necessary to fund reserves in accordance with reserve study recommendations. See Section IV and Section V for more details.

## III. RESERVE STUDY REQUIREMENTS

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SB 740 excerpt: *(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;*

**Recommendation: The Commonwealth of Virginia should require that independent, appropriately qualified entities<sup>9</sup> perform reserve studies for CICs within two years of the issuance of the first occupancy permission (Certificate of Occupancy or equivalent), and every five years thereafter.**

Virginia law requires that association governing boards conduct a reserve study at least once every five years<sup>10</sup>, but does not specify the qualifications for individuals who must perform the

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<sup>9</sup> What is considered a qualified entity may vary based on the number and nature of the CIC's capital components.

<sup>10</sup> Sections 55.1-1826, 55.1-1965, and 55.1-2147 of the Code of Virginia provide, in part:

“Except to the extent otherwise provided in the [governing documents], the [governing board] shall:



study. The absence of specifications is in recognition of the wide range and variety of capital components in CICs. Though many associations choose to hire independent consultants, such as reserve study firms, professional engineers, or architects, there is no requirement that an independent entity conduct the reserve study. This allows an association governing board to conduct the reserve study, regardless of qualifications, or select agents that may be unfamiliar with conducting a reserve study.

While many associations do hire reserve specialists or others qualified to evaluate the condition of a component and project repair and replacement timing and costs, establishing a requirement for “arms length” review increases transparency and accountability and ensures that associations and association members have accurate and complete information on reserve requirements. There are numerous established, qualified firms offering these services and this requirement would not likely require a significant shift in how a majority of CICs in the Commonwealth operate. It is noted that the State of Maryland requires an agent conducting a reserve study to meet one of the following criteria: (1) has prepared at least 30 reserve studies in the prior three calendar years, (2) has participated in the preparation of at least 30 reserve studies in the prior three calendar years while employed by a firm that prepares reserve studies, (3) holds a current license from the Maryland Board of Architects or the Maryland Board for Professional Engineers; or (4) is currently designated as a Reserve Specialist by the Community Association Institute or as a Professional Reserve Analyst by the Association of Professional Reserve Analysts.

CICs will benefit from more frequent and more in-depth capital component review and condition assessment and meaningful recommendations for timing and funding repair and replacement. Impacts on the condition of capital components resulting from changed climate conditions and the cost of construction materials should be evaluated to allow for more frequent and consistent attention to maintenance and repairs as well as adjustment in annual budgets and reserve account contributions.

Early identification of conditions that need attention will allow community associations to be more deliberative and less reactive to crisis conditions. More frequent review may allow CICs to take more timely action to address conditions and thereby improve overall structural integrity. More timely repair may be accomplished at less expense or allow more opportunity for competitive negotiation of repair and maintenance contracts. In addition, CICs can budget more accurately for long term repairs – taking into account wide fluctuations in costs reflected in consumer price index adjustments.

In discussion, the Work Group received reports that some associations have already adopted a practice of more frequent reserve study updates.

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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 [applicable section of the Code of Virginia];”

The Work Group acknowledged that any change in legislation would require associations to review the capital components included in their reserve studies and ensure that all applicable components are included. The Work Group noted that for phased projects, the reserve study should include components that are substantially complete.

The Work Group further noted that previous reserve studies conducted by an association, including inspection photographs of capital components, are useful in identifying evidence of changes in structural integrity of components over time and demonstrate a need for further inspection. The CRA team learned that monitoring changes in cracks or other evidence of wear in buildings is an important component of monitoring building integrity (Structural Engineer, personal communication, November 8, 2022). As such, building plans and all reserve studies should be retained as association books and records.

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

Under applicable statutes, “capital components” means “...those items, whether or not a part of the common area [or common elements], for which the association has the obligation for repair, replacement, or restoration and for which the board of directors [or executive board] determines funding is necessary.”<sup>11</sup>

The Commonwealth should include specific language to require reserve studies to broadly define capital components rather than attempt to list every capital component.

If language is targeted to address specific components, it may (1) fail to explicitly include all necessary components and thus will need to revisit the issue as new types of capital components emerge as concerns, and (2) create incentives for individuals and organizations to define capital components in such a way as not to be included in a reserve study. Aligning with current industry standards also allows Virginia to learn from the experience of other states and to adopt best practices with regard to the definition of capital components.

The Work Group noted that for phased projects, the reserve study should include components that are substantially complete. Further, the Work Group recommended identifying any additional information on transition from declarant control that would be helpful to conducting the initial reserve study and that this information and the reserve studies be retained as association books and records. The Work Group determined that the meaning of capital components for purposes of reserve studies should focus on *structural* components of facilities maintained by the association, that has direct or indirect impacts on physical safety.

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<sup>11</sup> See §§ 55.1-1800, 55.1-1900, and 55.1-2100 of the Code of Virginia.

Disclosure to purchasers was discussed at a number of the meetings of the Work Group. In light of pending legislation<sup>12</sup> to clarify disclosure requirements and make disclosures more understandable for potential buyers, the Work Group did not offer recommendations regarding disclosures.

## IV. BUDGET REQUIREMENTS

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SB 740 excerpt: *(iv) 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.**

The Work Group discussed that this recommendation is a necessary companion to the recommendation to fund reserve contributions as recommended by an association's reserve study (Section V and Section VI). See Section VI for a full discussion of funding reserves.

## V. ASSOCIATION AUTHORITY TO BUDGET FOR AND FUND RESERVES

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SB 740 excerpt: *(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;*

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

According to the CRA survey of CICs, a substantial percentage of CICs (21% condominium associations, 30% of single family/mixed unit developments) require a majority vote of association members to impose a special assessment, and a smaller proportion require such approval for raising regular assessments (9% condominium associations, 14% single family/mixed unit developments). In addition, some CICs have rules that cap the amount of assessments or annual increases in assessments.

Work Group members noted several anecdotal examples of instances in which reserve requirements were not funded due to (i) specific restrictions on the governing board's ability to

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<sup>12</sup> See SB 1222 (<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=sb1222>) and HB 2235 (<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=231&typ=bil&val=hb2235>) passed during the 2023 General Assembly Session.

increase assessments; (ii) the use of special assessments to meet reserve needs; and (iii) pressure from owners to direct expenditures away from funding reserves in favor of cosmetic or non-essential items. Having statutory authority to address reserve funding needs appropriately will allow governing boards to act in the best long term interests of their communities. Further discussion of these issues is below and in Section VI.

**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.**

Sections 55.1-1825 and 55.1-1964(E) of the Code of Virginia permit the governing boards of property owners' associations and condominium unit owners' associations to impose special assessments. However, these sections in statute also contain provisions permitting association members to rescind or reduce such special assessments upon majority vote at a meeting of the association membership.

Raising revenue through special assessments is an essential tool for CICs facing unexpected expenses such as emergency repairs. Allowing owners to rescind special assessments essentially makes financial stability among CICs optional (Berding, 2005). The option to disregard financial stability leaves CICs vulnerable to a number of conflicts of interest inherent to the CIC ownership structure. One such conflict of interest can arise between present and future unit owners. Present owners might see funding the maintenance or replacement of major components today as paying a subsidy to future owners, who will benefit from the improvements without having to contribute to the cost (McKenzie, 2019).

The proliferation of investor-owners among CICs has further discouraged long-term financial stability. Investor-owners of CIC units have been found to favor aesthetic improvements over less-visible maintenance of major components, while generally advocating for the minimization of CIC fees (Treffers & Lippert, 2020).

**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.**

CICs generally borrow funds when they are under-reserved, have unexpected expenses resulting from an incident or new regulations, or when completing a major upgrade, such as building performance investments or a new recreational facility. Though the Work Group recommended that CICs fund reserve contributions as recommended by the reserve study (Section VI), CICs that have been under-reserved for some time may need to borrow. In Virginia, about one-fourth of the condominium unit owners' associations who responded to the CRA survey reported that they have fully funded reserves. Another 24% of these associations believe it will take them six or more years to fully fund their reserve accounts. Fourteen (14%) percent

do not believe they can reach fully funded reserves through regular annual budgeting. This suggests that many condominium unit owners' association members are facing the likelihood of special assessments in the coming years. On average, single-family property owners' associations generally report much better conditions for reserves with almost half being fully funded and another 27% responding they can become fully funded through regular annual budgeting within five years. Nevertheless, 16% of single-family properties report being challenged in meeting reserve requirements.

Statutory authorization to permit borrowing will support the governing boards of associations for which the governing documents do not address borrowing; primarily in older governing documents. Modern governing documents usually address borrowing and, for corporate boards, borrowing is a routine business matter. The authorization may also combat the stigmatization of borrowing. The Work Group noted, however, that the way disclosure of lending is sometimes offered to potential buyers, without explanation or context, can also contribute to stigmatization.

CIC borrowing is distinct from mortgage borrowing because associations typically either do not own real estate or do not own real estate that banks are willing to accept as collateral. Common area real estate (clubhouses, recreation facilities, parking lots) may have substantial value, but is often proffered or otherwise subject to substantial conditions, such as supermajority member approval, in order to be sold. Instead of real estate collateral, lenders take access to the association's cash flow as collateral, based on the association's authority to collect assessments from its members (Cohen, 2023). A governing board's ability to borrow may be restricted by governing documents for specific purposes or limited to maximum amounts.

Even if a governing board is authorized to borrow, the governing board must find a willing lender. A growing number of financial institutions are lending to CICs. Because association cash flow, rather than real property, serves as collateral, the lender may also investigate the ability of members to pay higher assessments or whether the CIC may be at risk of spiraling delinquencies. In general, it is expected that expenses, even major maintenance expenses, will be covered by reserves. There are exceptions – for example, a CIC which would rather leverage its investments than cash them out or when a CIC must comply with new regulations (e.g. new energy benchmarking requirements in Maryland and the District of Columbia). However, it is possible that CICs in need of emergency financing may be unattractive borrowers from a lender's perspective.

According to several CIC lending specialists, lenders will review past reserve studies to understand the origin of the CIC's emergency capital needs and to determine the CIC's creditworthiness. Lenders also take into consideration reserve study quality and whether the study was conducted by an appropriately qualified entity. These lenders further consider the composition of the governing board, its activity, and stability.

Responsible lending should also be considered. Since 2008, lending approaches such as stretching out amortization and balloon payments have become uncommon, but are not entirely absent. These should be avoided. CIC lending is highly specialized and is always “portfolio lending” for the lending institution, as there is no secondary market for this type of loan. Under current lending practices, associations should identify specialists and expect fully-amortizing loans with a 15-year maximum. Lenders will generally limit the loan to no more than 20% of the total resale value of the property.

## VI. LIABILITY OF ASSOCIATIONS AND EXECUTIVE BOARDS

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SB 740 excerpt: *(vi) 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.**

Under current law, the governing boards of CICs are required to conduct reserve studies, and must include the following information in their budgets:

- the current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
- 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, as of the beginning of the fiscal year for which the budget is prepared;
- a statement describing the procedures used for estimation and accumulation of cash reserves; and
- a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

However, CICs are not required to set aside funds for reserves or provide funding for reserves.

CICs may face a “tragedy of the commons” problem whereby owners with access to public resources act in their own self-interest and, in doing so, deplete the resource. Private actors may overuse public goods because private actors tend to focus on short-term interests. Common spaces are viewed as “free” resources and thus may be overused because private actors do not consider the costs of maintaining and replacing them. Within CICs, the “tragedy of the commons” leads to residents preferring lower monthly assessments because they do not consider the social costs of common resources, or capital components or philosophically believe that future owners should pay for maintenance and repair. It is only when these goods are exhausted, that the costs of repairing or replacing these components becomes realized through special assessments.

To address the “free rider problem,” Tiebout (1956) developed a non-political solution that utilized the powers of market forces to adjust different valuations on different public goods. Much like the example of parents with higher incomes moving to higher tax (and higher quality) school districts, Tiebout (1956) hypothesizes that given certain conditions, consumers will migrate to environments that more closely match their preferences for common resources and public expenditures, which in the case of CICs would include available capital components and the monthly assessments required to maintain them. Following this logic, some consumers sort themselves into low expenditure and low tax communities.

This raises a question: Are certain CICs “low tax” because of the low level of common capital components or are communities inherently deferring expenditures to keep assessments low. Coase (1960) argues that externalities with zero transaction costs and fully defined property rights will be internalized through market transactions. With CICs, however, this scenario is flipped because these communities have assets that generate positive externalities in the present, but whose costs are typically in the future. This inevitably leads to problems described earlier where owners do not internalize future costs, and thus their preferences and decisions in the present are skewed towards the short-term. Reserve studies and reserve contribution funding seek to address this problem by gently suggesting that owners start to internalize these future costs to save themselves from a larger burden in the future.

Data from Association Reserves, a private firm specializing in reserve studies, found that 60.8% of associations with reserve funding ratios between 0% and 10% required a special assessment over a 15-year period. A majority of associations with reserve funding ratios between 10% and 20% required at least one special assessment over the study period. In comparison, less than 1% of associations that have fully funded reserves required special assessments over the 15-year study period.

Work Group deliberations addressed the role of legal liability in CIC governance: who is currently at risk of legal liability and for which reasons. Deliberations focused on determining the optimal assignment of liability to incentivize good governance. Governing boards attempting to raise adequate revenue by way of special assessments could face liability from lawsuits brought by association members, rescission of a reduced special assessment, or rejection of even routine increases in budgets based on consumer price index adjustments.

The Work Group’s legal and insurance experts did not believe existing immunity provisions would protect governing boards against liability for negligent governance. Rather, immunity would only apply to governing boards where attempts to raise necessary revenue were rescinded by a vote of the CIC membership. It is conceivable that ignorance or rejection of structural or major component deficiencies could protect boards against claims of negligence, but mandating professional, independent reserve studies as recommended (Section III) would preclude claims of ignorance.

Directors & Officers (D&O) insurance coverage may be needed to protect against this risk. The recommended statutory mandates regarding reserve studies (Section III) and the recommended statutory protection for boards raising revenue to fund reserve contributions (here and in Section IV and Section V) align liability and immunity with good governance incentives. The Work Group finds that a lack of funding in reserves may limit the ability of CICs to obtain insurance.

Reserve study recommendations further address the misalignment of incentives for CICs and the governing boards (Section III). While reserve studies are required on a regular basis, CICs are not required to select an independent agent to perform the reserve study. Furthermore, a reserve study may not adequately capture all the capital components of CICs if the capital components are not adequately defined. Lastly, the conduct of a reserve study does not necessarily mean that communities will adequately fund the recommended annual contributions to reserves.

Funding recommended contributions to reserves may necessitate decisions about retaining discretionary amenities. Work Group members discussed that the reserve study specialist will work with an association to determine the best approach for reaching the association reserve funding goals. Those recommendations may be to remove a component from the association's responsibility by either retiring the component or shifting the responsibility to the home or unit owner.

## VII. INSPECTIONS

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*SB 740 excerpt: (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;*

**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.**

The Work Group came to a consensus that the term “structural component” should mean “Components of or relating to the physical makeup of a building or component which are crucial to the building or component’s stability, and the failure of which would likely result in failure or instability of the building or component (e.g., columns, beams, etc.).”

The Work Group discussed the merits of following the example of Florida’s Senate Bill 4D, which calls for any physical structure three stories or more in height and over 30 years of age



(25 if the building is within three (3) miles of the coastline) to be subject to a “milestone inspection” every 10 years, which requires a visual inspection by a licensed architect or professional engineer. The Florida law stipulates that if structural professionals find anything troubling from their visual inspection concerning the structural integrity of the building, then they may perform a more invasive inspection to determine whether the building is safe for inhabitants.

The Work Group initially found some disagreement on the specifics of what should be included within such a visual inspection but decided that this sort of detail may need to be included in prior declarations and definitions. It was also noted that these milestone inspections were not designed to make sure that buildings were complying with building codes, but rather to focus on making sure that buildings are structurally sound and safe. Work Group members concluded it was wise to not differentiate between structures that were in close proximity to coasts versus those close to rivers, lakes, etc. and that any structure near a substantial body of water should be under the same guidelines. In alignment with the Florida law, the Work Group also determined that inspection records be made available to buyers, renters, and unit owners and that photographs be included in any inspection.

There was discussion among a sub-group of Work Group members about differences across materials, such as timber-framed structures versus reinforced concrete. For example, while reinforced concrete may have superior structural resiliency, the reinforcements used in modern timber framed construction may be more readily accessible for inspection allowing problems to be identified earlier. Given potential tradeoffs in advantages and disadvantages across differing construction materials and methods, and recognizing the potential for future technological advances in construction techniques and materials, the Work Group did not see an advantage to addressing specific materials in recommended legislative changes.

**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 CIC 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.**

The Work Group noted that in addition to including an inspection requirement in the statute, the CIC Board should update its *Guidelines for the Development of Reserve Studies for Capital Components* to address liability of governing boards and insurance coverage (as discussed in Section VI) as related to funding of reserves, and provide helpful information about the circumstances requiring professional inspection. Failing to adhere to the inspection schedule and to address a condition once discovered could hinder replacement or void insurance.

## VIII. INSURANCE COVERAGE

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SB 740 excerpt: *(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;*

**Recommendation: No statutory or regulatory changes recommended.**

Work Group deliberations determined that appropriate insurance products for CICs – covering both damage to property, monetary liability, and non-monetary damages – are already available. However, there is concern that some governing boards may not be well informed about of the types of coverage needed by associations and what products are available in the insurance market. This is especially true for smaller, self-managed CICs that may not have access to an insurance broker or risk management services. Neither the CIC Board, nor DPOR, collect data regarding insurance coverage for CICs, but one Work Group member estimated up to half of CICs in Virginia may lack adequate insurance coverage. Insurance is an essential component of governing board member education discussed in Section IX.

Work Group deliberations determined that property insurance covers damage to property caused by the sudden and accidental occurrence of an all-risk peril. If catastrophic structural or major component failure is caused by neglect or deferred maintenance, the loss may not be considered sudden and accidental, and coverage may not be available. Work Group members also determined that risk mitigation by insurance policy underwriters will address inadequate maintenance and other short-sighted management practices. Insurance industry representatives on the Work Group indicated there is no insurance available for losses due to a failure to repair or maintain covered property.

## IX. EDUCATION OF ASSOCIATION BOARD MEMBERS AND OWNERS

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SB 740 excerpt: *(ix) 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 CIC Ombudsman.**

Expert commentators have recognized a lack of relevant knowledge and experience among volunteer board members (McKenzie, 2019; Treffers & Lippert, 2020), as well as the potential for unit owners to misunderstand their responsibilities under the CIC ownership structure (Berding, 2005). Publicly-provided education is identified as a solution to this knowledge gap. However, Work Group breakout session participants questioned whether mandatory educational requirements would disincentivize service on CIC boards. Since comprehensive training and materials are already available in Virginia and from industry groups, the Work Group's

recommendation is focused on broadening the dissemination of these resources at no cost in an on-demand, multi-modal format (print, online, other).

Governing board members need readily accessible educational resources, especially during transition from developer control and for novice board members. Topics should include, but not be limited to, an orientation to CIC Board resources and association board responsibilities (especially the obligation to maintain, repair and replace common property), management and facilitation skills, reserves, inspections, insurance, and borrowing.

Maintenance and repair inside individual units is the responsibility of individual owners; however, insurance claims indicate that structural problems can begin with or be exacerbated by accidents or lack of maintenance in individual units, such as water heaters or pipe failures, that can cause significant damage in the owner's unit and other units within a building. Owners need information on maintenance and repair inside individual units, where applicable, because deficiencies in maintenance and repair in individual units can have consequences for structural integrity of an entire building.

In 2022, the State of Illinois passed a new requirement for all association board members to complete an annual training program covering board member roles and fiduciary responsibilities<sup>13</sup>. The Work Group did not recommend that Virginia mandate such training, in part due to the difficulty some CIC associations have in finding volunteers to serve on governing boards. However, Virginia law does provide for funds that can support the provision of knowledge resources to CIC governing board members.

The Common Interest Community Management Information Fund ("the Fund") is established under § 54.1-2354.2 of the Code of Virginia. The Fund is supported by monies paid to the CIC Board including fees for (i) licensure of common interest community managers; and (ii) registration of common interest community associations. The Fund "... is to be used in the discretion of the [CIC] Board to promote the improvement and more efficient operation of common interest communities through research and education." The Fund is principally used to pay for the expenses of the CIC Board and the Office of the CIC Ombudsman. The statute provides the Fund may be used for "...financing or promoting..." the following:

- Information and research in the field of common interest community management and operation;
- Seminars and educational programs designed to address topics of concern to community associations; and
- Other programs deemed necessary and proper to accomplish the purpose of [Article 2 of Chapter 23.3 of Title 54.1 of the Code of Virginia].

Work Group members also discussed lack of awareness among local government staff and elected officials regarding CICs and suggested that these materials could be available to help offer information more broadly to all interested partners. The Work Group suggested that the CIC

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<sup>13</sup> Illinois SB 3434 (2021-2022).

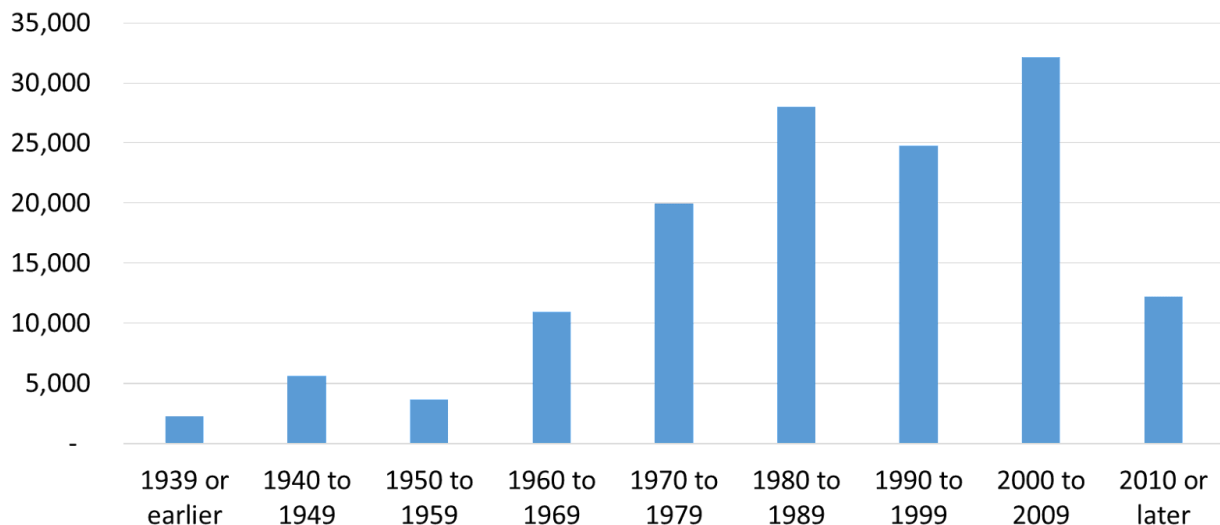
Board could send regular emails to mayors and key staff (county administrators, town and city managers and planning staffs) regarding resources available through the CIC Board or other specialists.

Homeownership education in Virginia is largely limited to home buying, rather than repair and maintenance. However, as shown in the figure below, the majority of condominium units in Virginia are more than twenty years old. Understanding maintenance and repair needs, including budgeting, is an essential element of caring for homes and stewardship of the housing stock. These types of education materials could benefit all residents of Virginia, since lack of awareness of maintenance concerns among occupants is a risk for all residential properties.

Many homeowners choose condominiums as a more affordable housing option. However, some members of CICs indicate they that they do not have the financial resources to pay higher common expense assessments or special assessments that may be necessary to build and maintain reserves. Even though the information on individual CIC finances is made available before a property is sold, it is not clear that buyers always understand the context or implications of this information. The development of readily available resources from relevant state agencies (Virginia Housing, Department of Housing and Community Development, DPOR) could help Virginia home buyers become more informed and better prepared for the ownership experience. This is especially true for first-time home buyers.

### Virginia Condo Units by Year Built

Source: VCHR Tabulation of 2019 PUMS 5-year Estimates



## X. JUDICIAL REMEDIES

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SB 740 excerpt: *(x) judicial remedies, including an option to petition a court to authorize an assessment or alternative funding;*

**Recommendation: No statutory or regulatory changes recommended.**

Rather than recommending judicial remedies, the Work Group recommended adding statutory support for special assessments for maintenance, repair, and funding recommended reserves (Section V), borrowing (Section V), and funding reserves as recommended by the reserve study (Section VI).

## XI. COMMON INTEREST COMMUNITY ASSOCIATION MANAGEMENT

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SB 740 excerpt: *(xi) common interest community association management, including manager qualifications and self-management versus professional management.*

**Recommendation: No statutory or regulatory changes recommended.**

The Work Group discussed the importance of professional management in larger associations, but did not conclude that associations should be required to have professional managers, nor that management should have ultimate responsibility for common property maintenance and repair. The Work Group members discussed managers as a key player in maintenance and awareness of deficiency of maintenance or evidence of compromised structural integrity.

## Other Recommendations and Considerations

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In accordance with the requirements of SB 740, the Work Group offered recommendations on the specific issues enumerated in the legislation. During its review, the Work Group also raised concerns that were outside the scope of the legislation. These concerns were related to financially distressed CICs, especially those that include low- and moderate-income households. The recommendations in this section are intended to address specific concerns or opportunities for distressed CICs.

*Public Investments*

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

Federally-funded programs for home repair, weatherization and rehabilitation could benefit condominium unit owners, but are traditionally deployed in a single-family setting. The Work Group discussed the importance of ensuring that these programs, which are administered at the state level, can be deployed in condominium developments. However, these programs are not deployed widely enough or funded sufficiently enough to serve all distressed homeowners. Therefore, the Work Group suggests further consideration of providing zero or low-interest financing and other support for CIC owners who have limited financial resources.

The Virginia Center for Housing Research at Virginia Tech (VCHR) used American Community Survey Public Use Microdata to offer the Work Group information about Virginia households that report having a condominium fee. Households that own a unit with a condominium fee have a narrower distribution of income as compared to all owners in Virginia, and a lower median income compared to all homeowners in Virginia.

**Distribution of Household Incomes in Virginia**

Source: VCHR tabulation of 2019 ACS PUMS

	Condo Owners	All Owners
25 <sup>th</sup> Percentile	\$50,000	\$47,500
Median	\$85,700	\$87,000
75 <sup>th</sup> Percentile	\$139,000	\$146,000

Among homeowners with a condominium assessment and incomes less than \$50,000, 70% pay more than 30% of their income for housing costs, the usual threshold for indicating housing cost stress. For these households (25,500) extra costs associated with unexpected dues increases or special assessments could threaten their financial stability. Moreover, when faced with higher association costs (dues or special assessments), these households may defer maintenance of their own unit in favor of other necessities that could increase the risk of damage in their own units and neighboring units. Among households that pay more than 30% of their income for housing costs, 13,780 pay more than 50% of their income for housing and could be at risk of foreclosure with any emergency cost.

Older buildings may be at greater risk of becoming distressed if they do not receive appropriate maintenance, repair and investment. Low- and moderate-income households have a disproportionately high presence in buildings originally built from 1970 to 1989. Low- and moderate-income households with high energy costs, which can be used as a proxy for condition, have a disproportionately high presence in buildings built in the 1970s and 2000-2009.

Existing programs could support these households, the overall integrity of multifamily buildings, and the health of association finances.

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

Low or zero interest financing, including forgivable loans, at the state level could support the preservation of naturally occurring affordable housing, help stabilize distressed CIC associations, and leverage private financing. Work Group members suggested that such lending should only be available for circumstances where existing structures are still well within their normal useful life and the CIC associations cannot raise needed funds because owners' incomes are too low. Investments in residential properties that are beyond their useful life should be directed for replacement instead of repair and rehabilitation. Some Work Group members suggested that a government backstop for lending to CICs with appropriate qualifications could be useful in broadening the willingness of private lenders to finance major repair, renovation and replacement projects. The Work Group also discussed that localities are important partners in addressing CIC associations that are distressed and cannot maintain property, which could threaten individual housing stability.

One mechanism that the Work Group discussed is examining the potential use of municipal/county Industrial Development Authority (IDA) bonds to provide support for CICs. The Industrial Development and Revenue Bond Act (Chapter 49 of Title 15.2 of the Code of Virginia) governs the use of IDA bond and covers a wide range of economic and community investments<sup>14</sup>.

While support for owner-occupied residential properties is not explicitly listed in the IDA Act, supporting investments related to safe and affordable housing is listed, and one can observe that having safe and affordable workforce housing is a key component of promoting economic development in the Commonwealth.

In the past two years, legislation has been proposed to allow qualified CICs to obtain federally-backed loans for renovating or rehabilitating certain distressed properties. There is also a proposal in the Maryland General Assembly<sup>15</sup> allowing localities to establish funds to support infrastructure repairs at condominium and homeowners' associations.

#### *Termination/Abandonment/Redevelopment*

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

CIC property regimes can be terminated if a sufficient threshold of association members vote for dissolution. In Virginia, as in many states, this threshold is 80 percent, unless otherwise specified

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<sup>14</sup> See § 15.2-4901 of the Code of Virginia.

<sup>15</sup> See HB 0055 (<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0055>) pending in the Maryland General Assembly.

in association governing documents<sup>16</sup>. Termination usually occurs in one of two ways: a buyer approaches community members with a purchase offer, which is approved or rejected by the appropriate percentage of members; or a buyer purchases the requisite number of units necessary to control a percentage of membership votes able to approve termination. Buyers usually are interested in redeveloping the land or converting owned units to rentals (Winston & Hansel, 2022).

Work Group members discussed a number of issues stemming from the termination process. First, ensuring that all residents are able to find a new, desirable and affordable place to live and have sufficient return on their investment in the property subject to the termination and redevelopment. Second, the length of the termination process disincentivizes redevelopment even when buildings have come to the end of their useful life. The Work Group discussed that a more straightforward path to termination and redevelopment with appropriate support and incentives could be very beneficial for older, distressed properties and their owners.

Absent adequate consumer protections, termination by way of third-party accrual of membership votes can take the form of a “hostile takeover” (McKenzie, 2021), especially among moderate-income CICs with fewer resources. Relative to other states, Florida has enacted more robust consumer protections in its termination statute in response to high-profile news reports on condominium owners losing their homes (Winston & Hansel, 2022). Local property market conditions influence the risk of this type of conversion. Rapidly increasing rental prices incentivize converting owned housing to rentals, with the effect of removing relatively affordable ownership housing from the market (McKenzie, 2021).

The City of Chicago in particular has seen an increase in distressed CICs – caused in some cases by inadequate maintenance reserves among low-resource associations, and others caused by fraudulent activity in CIC formation. Chicago and the State of Illinois have developed a “deconversion” process by which a court places acutely distressed CIC properties in receivership, appoints a non-profit or public lender to dissolve the CIC and make necessary repairs, and transfer the property to a new owner, such as an affordable housing operator (McKenzie, 2021). In addition to adding consumer protections, Florida has also offered support and incentives for redevelopment in the *Florida’s Distressed Condominium Relief Act*.

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<sup>16</sup> Section 55.1-1937 of the Virginia Condominium Act provides for the termination of condominiums. Changes to this section of statute were recently made during the 2020 General Assembly Session. See HB 1548 (2020) ( <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1548>)



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# Appendix A

## Senate Bill 740 (2022)

# 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.*

# Appendix B

## Work Group Membership and Meeting

### Schedule



# STRUCTURAL INTEGRITY AND RESERVES WORK GROUP MEMBERSHIP

SENATE BILL 740

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<b>Walter Alcorn</b> Fairfax County Board of Supervisors	Local Government Representative
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<b>Jon Bach</b> Community Management Corporation - An Associa Company	Common Interest Community Manager Representative
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<b>John “JB” Bailey</b> Woodlake Community Association	Common Interest Community Manager Representative
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<b>Michelle Baldry</b> Reserve Advisors	Reserve Specialist Representative
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<b>Gary L. Beveridge</b> Beveridge & Akers Insurance Group	Insurance Professional Representative
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<b>Jeffrey Brown</b> Department of Housing and Community Development	Local and State Building Official Representative
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<b>Steven Y. Brumfield</b> Toll Brothers	Developer Representative
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<b>Ron Clements</b> Chesterfield County Building Official	Local and State Building Official Representative
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<b>Walter “Walt” Diercks</b> Lake of the Woods Association	Common Interest Community Property Owners Representative
<b>Mark D. Dix</b> Virginia Trial Lawyers Association	Property and Personal Injury Claims Attorney Representative
<b>Lee Frame</b> Orange County Board of Supervisors	Local Government and Volunteer Community Leader Representative
<b>Heather Gillespie</b> Department of Professional and Occupational Regulation	Common Interest Community Ombudsman Representative
<b>Colin A. Horner</b> Rotonda Condominium Unit Owners Association	Common Interest Community Manager Representative
<b>Kimberly B. Kacani</b> Consultant	Volunteer Community Leader
<b>Erin Kormann</b> Virginia Realtors	Common Interest Community Property Owners Representative
<b>Rafael A. Martinez</b> Virginia Partners Bank/Maryland Partners Bank (a Division of Virginia Partners Bank)	Financial Institution Representative
<b>Theresa Melson</b> USI Insurance Services LLC	Insurance Professional Representative
<b>Phoebe E. Neseth</b> Community Associations Institute	Volunteer Community Leader Representative

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**Edward J. O’Connell, III**  
Whiteford Taylor Preston LLP

Community Association Attorney  
Representative

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**John Olivieri**  
Associated Development Management  
Corp

Developer Representative

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**Phoebe Rolan**  
Watergate at Landmark Condominium Unit  
Owners’ Association

Common Interest Community Property  
Owner Representative

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**Anne Sheehan**  
Goldklang Group, CPA & PC

Auditor Representative  
Common Interest Community Board  
Representative

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**Chris Stone**  
Clark Nexsen

Professional Engineer Representative

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**Lucia Anna “Pia” Trigiani**  
***Work Group Chair***  
Mercer Trigiani

Community Association Attorney  
Representative

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**Lynette Wuensch**  
EPR, PC

Reserve Specialist

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## WORK GROUP STAFF

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**Trisha L. Lindsey**  
Executive Director

[Trisha.Lindsey@dpor.virginia.gov](mailto:Trisha.Lindsey@dpor.virginia.gov)

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**Joseph Haughwout**  
Regulatory & Board Administrator

[Joseph.Haughwout@dpor.virginia.gov](mailto:Joseph.Haughwout@dpor.virginia.gov)

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**Raven Custer**  
Administrative Coordinator

[Raven.Custer@dpor.virginia.gov](mailto:Raven.Custer@dpor.virginia.gov)

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# STRUCTURAL INTEGRITY AND RESERVES WORK GROUP MEETING SCHEDULE

SENATE BILL 740

MEETING DATE	MEETING LOCATION
<b>August 5, 2022</b>	<b>Perimeter Center</b> Second Floor Conference Center 9960 Mayland Dr. Richmond, VA 23233
<b>October 19, 2022</b>	<b>Virginia Tech Roanoke Center</b> Roanoke Higher Education Center 7 <sup>th</sup> Floor, 108 N. Jefferson St. Roanoke, VA
<b>November 16, 2022</b>	<b>Virginia Tech Research Center Arlington</b> 900 N. Glebe Rd. Arlington, VA
<b>February 7, 2023</b>	<b>Virginia Tech Newport News Center</b> 700 Tech Center Parkway, Suite 305 Newport News, VA
<b>March 15, 2023</b>	<b>Virginia Tech Richmond Center</b> 2810 N. Parham Rd., Suite 300 Henrico, VA

# Appendix C

August 5, 2022, Work Group Meeting

Minutes

# STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORK GROUP

## MINUTES OF MEETING

The Structural Integrity and Reserves Study Work Group met on August 5, 2022 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 2, Richmond, Virginia 23233.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair  
Walter Alcorn  
Jon Bach  
John Bailey  
Michelle Baldry  
Erin Barton  
Gary Beveridge  
Jeffrey Brown  
Steven Brumfield  
Ron Clements  
Walter Diercks  
Mark Dix

Lee Frame  
Heather Gillespie  
Kimberly Kacani  
Rafael Martinez  
Theresa Melson  
Edward O'Connell  
John Olivieri  
Phoebe Rolen  
Anne Sheehan  
Chris Stone  
Lynette Wuensch

Work Group members Colin Horner and Phoebe Neseth were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Demetrios J. Melis, Director  
Trisha L. Lindsey, Executive Director, Common Interest Community Board  
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator  
Jennifer Sayegh, Policy and Legislative Affairs Manager  
Raven Custer, Administrative Coordinator

Mel Jones, Keith Waters and Nikki Johnson, on behalf of George Mason University, were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:11 a.m.

**Call to Order**

Ms. Lindsey advised the Work Group of the emergency evacuation procedures.

**Emergency  
Evacuation  
Procedures**

Structural Integrity and Reserves Study (SB 740) Work Group  
August 5, 2022

Ms. Trigiani advised to move the public comment period until after introduction of work group. Mr. Beveridge moved to approve the agenda as amended. Ms. Melson seconded the motion, which was unanimously approved by Alcorn, Bach, Bailey, Baldry, Barton, Beveridge, Brown, Brumfield, Clements, Diercks, Dix, Frame, Gillespie, Kacani, Martinez, Melson, O'Connell, Olivieri, Sheehan, Stone, and Wuensch.

**Approval of Agenda**

Ms. Trigiani welcomed the Structural Integrity and Reserves Study Work Group to their first meeting and thanked everyone for participating.

**Welcome**

Ms. Rolen arrived to the Work Group meeting at 10:23 a.m.

**Arrival of Work Group Member**

Ms. Trigiani introduced to the Work Group DPOR Director, Demetrios "Mitch" Melis.

**Introduction of Work Group**

Members of the Work Group, Board staff, and George Mason University Facilitators introduced themselves.

There were no members of the public present who wished to address the Work Group.

**Public Comment Period**

Ms. Lindsey and Ms. Trigiani provided an overview of the scope for the Work Group.

**Discussion**

Ms. Johnson shared a presentation of the overview of the scope of the committee and George Mason University's (GMU) participation in the Work Group.

Ms. Dawn Bauman, Senior Vice President, Government & Public Affairs of the Community Associations Institute (CAI), shared a presentation about CAI's response and public policy recommendations following the partial collapse of the Champlain Towers South in South Florida in 2021.

The Work Group was provided with (i) a letter from the Honorable Scott A. Surovell, patron of SB 740; (ii) current versions of applicable common interest community laws and regulations-; (iii) provisions of the Uniform State Building Code; (iv) CIC Board guidelines for development reserve studies for capital components; (v) various CAI publications related to condominium and condominium safety; (vi) Florida SB 4-D; and additional news and journal articles in relation to Champlain Towers.

**Resources and Information**

The Board recessed from 12:13 p.m. to 12:47 p.m.

**Recess**

Structural Integrity and Reserves Study (SB 740) Work Group  
August 5, 2022

The Work Group went into breakout sessions lead by Mel Jones, Keith Waters, and Nikki Johnson from GMU.


**Breakout Sessions**

There being no further business, the meeting adjourned at 2:01 p.m.

**Adjourn**



Lucia Anna Trigiani, Chair



Demetrios J. Melis, Secretary

# Appendix D

October 19, 2022, Work Group Meeting

Minutes

STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORK GROUP

MINUTES OF MEETING

The Structural Integrity and Reserves Study Work Group met on October 19, 2022, at the Virginia Tech Roanoke Center, 108 N. Jefferson Street, #701, Roanoke, Virginia 24016.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair  
Walter Alcorn  
Jon Bach  
John Bailey  
Michelle Baldry  
Gary Beveridge  
Jeffrey Brown  
Steven Brumfield  
Ron Clements  
Walter Diercks

Mark Dix  
Lee Frame  
Heather Gillespie  
Colin Horner  
Kimberly Kacani  
Phoebe Neseth  
Edward O'Connell  
John Olivieri  
Phoebe Rolan  
Anne Shechan

Work Group members Erin Barton, Rafael Martinez, Theresa Melson, Chris Stone and Lynette Wuensch were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Trisha L. Lindsey, Executive Director, Common Interest Community Board  
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator  
Tanya M. Pettus, Board Administrator  
Raven Custer, Administrative Coordinator

Mel Jones, Terry Clower, Mark Goldberg-Foss, Bob McNab, and Matt Vogel were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:02 a.m.

**Call to Order**

Ms. Jones advised the Work Group of the emergency evacuation procedures.

**Emergency  
Evacuation  
Procedures**

Mr. O'Connell moved to approve the agenda. Ms. Rolan seconded the motion, which was unanimously approved by: Alcorn, Bach, Bailey, Baldry, Beveridge, Brown, Brumfield, Clements, Diercks, Dix, Frame,

**Approval of Agenda**

Structural Integrity and Reserves Study (SB 740) Work Group  
October 19, 2022

Gillespie, Horner, Kacani, Neseth, O'Connell, Olivieri, Rolen, Sheehan, and Trigiani.

Mr. Frame moved to approve the August 5, 2022, Structural Integrity and Reserves Work Group meeting minutes as presented. Mr. Brumfield seconded the motion which was unanimously approved by: Alcorn, Bach, Bailey, Baldry, Beveridge, Brown, Brumfield, Clements, Diercks, Dix, Frame, Gillespie, Horner, Kacani, Neseth, O'Connell, Olivieri, Rolen, Sheehan, and Trigiani

**Approval of Minutes**

There were no members of the public present who wished to address the Work Group.

**Public Comment Period**

Ms. Jones welcomed the Structural Integrity and Reserves Study Work Group to their second meeting and thanked everyone for participating.

**Welcome**

Mr. McNab shared a presentation on reserve studies from an economic perspective.

**Presentations**

Mr. Goldberg-Foss shared a presentation on CIC governance.

Ms. Jones shared a presentation on condominium and household characteristics. Ms. Jones reviewed breakout session topics for consideration and provided statistics to consider on each topic. The breakout session topics were: Reserve Studies, Board Governance, and Variety of Conditions and Circumstances for CICs. Work Group members were asked to provide staff with their preference for the breakout session they would attend.

Mr. McNab shared a presentation on survey instruments.

The Board recessed from 12:00 p.m. to 12:45 p.m.

**Recess**

The Work Group went into breakout sessions lead by Mel Jones, Mark Goldberg-Foss, and Bob McNab at 12:45 and returned as the full group at 2:01 p.m.

**Breakout Sessions**

The Work Group was provided with (i) a letter from the Honorable Scott A. Surovell, patron of SB 740; (ii) current versions of applicable common interest community laws and regulations-; (iii) provisions of the Uniform State Building Code; (iv) CIC Board guidelines for development reserve studies for capital components; (v) various CAI publications related to reserve studies, condominium and condominium safety, infrastructure in community associations, and state volunteer

**Resources and Information**



Structural Integrity and Reserves Study (SB 740) Work Group  
October 19, 2022

immunity laws; (vi) Florida SB 4-D; and additional news and journal articles in relation to Champlain Towers.

The Work Group discussed key topics from the breakout sessions as a full group. **Other Business**


Ms. Jones reminded the committee of the upcoming Work Group meeting on November 16, 2022 in Arlington **Future Meeting Dates**

Ms. Trigiani reminded Work Group members to complete their conflict of interest forms **Complete Conflict of Interest Forms**

There being no further business, the meeting adjourned at 2:15 p.m. **Adjourn**



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Lucia Anna Trigiani, Chair



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Demetrios J. Melis, Secretary

# Appendix E

November 16, 2022, Work Group

Meeting Minutes

STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORKGROUP

MINUTES OF MEETING

The Structural Integrity and Reserves Study Workgroup met on November 16, 2022, at the Virginia Tech Research Center Arlington, 900 N. Glebe Rd, Arlington, Virginia 22203.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair  
Walter Alcorn  
Michelle Baldry  
Erin Barton  
Gary Beveridge  
Steven Brumfield  
Walter Diercks  
Mark Dix  
Lee Frame  
Heather Gillespie

Colin Horner  
Kimberly Kacani  
Rafael Martinez  
Theresa Melson  
Phoebe Neseth  
Edward O'Connell  
John Olivieri  
Phoebe Rolen  
Lynette Wuensch

Workgroup members Jon Bach, John Bailey, Jeffrey Brown, Ron Clements, Anne Sheehan, and Chris Stone were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Trisha L. Lindsey, Executive Director, Common Interest Community Board  
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator  
Jennifer Sayegh, Policy and Legislative Affairs Manager  
Raven Custer, Administrative Coordinator

Mel Jones, Terry Clower, Mark Goldberg-Foss, Bob McNab, and Matt Vogel were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:13 a.m.

**Call to Order**

Ms. Jones advised the Workgroup of the emergency evacuation procedures.

**Emergency  
Evacuation  
Procedures**

Mr. Brumfield moved to approve the agenda. Mr. Alcorn seconded the motion, which was unanimously approved by: Alcorn, Baldry, Barton,

**Approval of Agenda**

Structural Integrity and Reserves Study (SB 740) Workgroup  
November 16, 2022

Beveridge, Brumfield, Diercks, Dix, Frame, Gillespie, Horner, Kacani, Martinez, Melson, Neseth, O'Connell, Olivieri, Rolen, Trigiani, and Wuensch.

Mr. Frame moved to approve the October 19, 2022, Structural Integrity and Reserves Workgroup meeting minutes as presented. Mr. Brumfield seconded the motion which was unanimously approved by: Alcorn, Baldry, Barton, Beveridge, Brumfield, Diercks, Dix, Frame, Gillespie, Horner, Kacani, Martinez, Melson, Neseth, O'Connell, Olivieri, Rolen, Trigiani, and Wuensch.

**Approval of Minutes**

There were no members of the public present who wished to address the Workgroup.

**Public Comment Period**

Ms. Jones welcomed the Structural Integrity and Reserves Study Workgroup to their third meeting and shared an introductory presentation.

**Presentations**

Ms. Jones shared a presentation on structural integrity.

Mr. McNab shared a presentation on liabilities.

Mr. Goldberg-Foss shared a presentation on insurance for common interest communities.

Mr. O'Connell departed from the Workgroup meeting at 11:36 a.m.

**Departure of Workgroup Member**

Mr. Goldberg-Foss continued his presentation on insurance for common interest communities.

**Presentations Continued**

Ms. Jones shared a presentation on financing and borrowing for common interest communities.

Ms. Jones shared a presentation on condominium and household characteristics. Ms. Jones reviewed breakout session topics for consideration and provided points to consider on each topic. The breakout session topics were: Board Responsibility, Liability and Insurance; Criteria for Structural Integrity; and Financing and Rehabilitation. Workgroup members were asked to provide staff with their preference for the breakout session they would attend.

The Board recessed from 12:20 p.m. to 12:55 p.m. Mr. Beveridge departed during the recess.

**Recess and Departure of Workgroup Member**

Structural Integrity and Reserves Study (SB 740) Workgroup  
November 16, 2022

The Workgroup went into breakout sessions led by Mel Jones, Mark Goldberg-Foss, and Bob McNab at 12:55 and returned as the full group at 2:03 p.m.

**Breakout Sessions**

Mr. Dix departed from the Workgroup meeting at 2:03 pm.

**Departure of  
Workgroup  
Member**

The Workgroup was provided with (i) a letter from the Honorable Scott A. Surovell, patron of SB 740; (ii) current versions of applicable common interest community laws and regulations-; (iii) provisions of the Uniform State Building Code; (iv) CIC Board guidelines for development reserve studies for capital components; (v) various CAI publications related to reserve studies, condominium and condominium safety, infrastructure in community associations, and state volunteer immunity laws; (vi) Florida SB 4-D; and additional news and journal articles in relation to Champlain Towers.

**Resources and  
Information**

The Workgroup discussed key topics from the breakout sessions as a full group.

**Other Business**

Ms. Jones reminded the committee of the upcoming Workgroup meeting on February 7, 2023, in Newport News

**Future Meeting  
Dates**

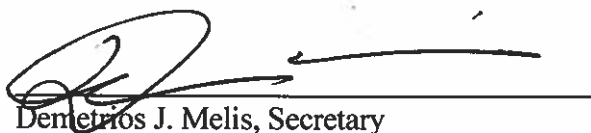
Ms. Trigiani reminded Workgroup members to complete their conflict of interest forms

**Complete Conflict  
of Interest Forms**

There being no further business, the meeting adjourned at 2:14 p.m.

**Adjourn**

  
Lucia Anna Trigiani, Chair

  
Demetrios J. Melis, Secretary

# Appendix F

February 7, 2023, Work Group Meeting

Minutes

STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORKGROUP

MINUTES OF MEETING

The Structural Integrity and Reserves Study Workgroup met on February 7, 2023, at the Virginia Tech Newport News Center, 700 Tech Center Pkwy, Newport News, Virginia 23606.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair  
Jon Bach  
John Bailey  
Michelle Baldry  
Gary Beveridge  
Jeffrey Brown  
Steven Brumfield  
Ron Clements  
Lee Frame  
Heather Gillespie

Colin Horner  
Kimberly Kacani  
Rafael Martinez  
Theresa Melson  
Edward O'Connell  
John Olivieri  
Phoebe Rolen  
Anne Sheehan  
Chris Stone  
Lynette Wuensch

Workgroup members Walter Alcorn, Walter Diercks, Mark Dix, Erin Kormann , and Phoebe Neseth were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Trisha L. Lindsey, Executive Director, Common Interest Community Board  
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator  
Raven Custer, Administrative Coordinator

Mel Jones, Terry Clower, and Matt Vogel were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:09 a.m.

**Call to Order**

Ms. Jones advised the Workgroup of the emergency evacuation procedures.

**Emergency  
Evacuation  
Procedures**

Mr. Frame moved to approve the agenda. Mr. Stone seconded the motion, which was unanimously approved by: Bach, Bailey, Baldry, Beveridge, Brown, Brumfield, Clements, Frame, Gillespie, Horner, Kacani, Martinez, Melson, O'Connell, Olivieri, Rolen, Sheehan, Stone, Trigiani, and Wuensch.

**Approval of Agenda**

Structural Integrity and Reserves Study (SB 740) Workgroup  
February 7, 2023

Mr. Frame moved to approve the November 16, 2022, Structural Integrity and Reserves Workgroup meeting minutes as presented. Ms. Melson seconded the motion which was unanimously approved by: Bach, Bailey, Baldry, Beveridge, Brown, Brumfield, Clements, Frame, Gillespie, Horner, Kacani, Martinez, Melson, O'Connell, Olivieri, Rolen, Sheehan, Stone, Trigiani, and Wuensch.

**Approval of Minutes**

Maurice White was present and introduced himself to the Workgroup.

**Public Comment Period**

There were no members of the public present who wished to address the Workgroup.

Mr. Clower welcomed the Structural Integrity and Reserves Study Workgroup to their fourth meeting.

**Discussion**

Mr. Clower provided the Workgroup with the Structural Integrity and Reserves Survey results.

Ms. Jones presented the Workgroup with the potential recommendations for the final report. The Workgroup began discussion on the potential recommendations for the final report.

The Workgroup recessed from 11:35 a.m. to 11:48 a.m.

**Recess**

The Workgroup continued to discuss the potential recommendations for the final report

**Discussion Continued**

The Workgroup recessed from 12:22 p.m. to 12:31 p.m.

**Recess**

The Workgroup continued discussion on the potential recommendations for the final report.

**Discussion continued**

After lengthy discussion, the Workgroup determined the recommendations to be included in the draft final report.

The Workgroup was provided with (i) a letter from the Honorable Scott A. Surovell, patron of SB 740; (ii) current versions of applicable common interest community laws and regulations-; (iii) provisions of the Uniform State Building Code; (iv) CIC Board guidelines for development reserve studies for capital components; (v) various CAI publications related to reserve studies, condominium and condominium safety, infrastructure in community associations, and state volunteer immunity laws; (vi) Florida SB 4-D; and additional news and journal articles in relation to Champlain Towers.

**Resources and Information**



Structural Integrity and Reserves Study (SB 740) Workgroup  
February 7, 2023

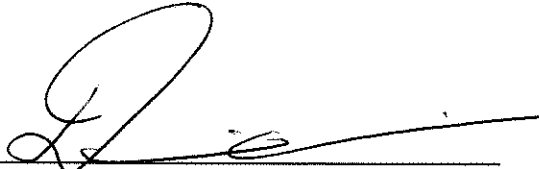
The Workgroup discussed the need for definitions of some terms applicable to the final report. **Other Business**

Mr. Clower reminded the committee of the upcoming final Workgroup meeting on March 15, 2023, in Richmond. **Future Meeting Dates**

Ms. Trigiani reminded Workgroup members to complete their conflict of interest forms **Complete Conflict of Interest Forms**

There being no further business, the meeting adjourned at 2:28 p.m. **Adjourn**

  
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Lucia Anna Trigiani, Chair

  
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Demetrios J. Melis, Secretary

# Appendix G

March 15, 2023, Draft Work Group

Meeting Minutes

STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORKGROUP

MINUTES OF MEETING

The Structural Integrity and Reserves Study Workgroup met on March 15, 2023, at the Virginia Tech Richmond Center, 2810 N. Parham Road, Richmond, Virginia 23294.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair  
Walter Alcorn  
Jon Bach  
John Bailey  
Michelle Baldry  
Gary Beveridge  
Steven Brumfield  
Walter Diercks  
Lee Frame  
Heather Gillespie

Colin Horner  
Kimberly Kacani  
Erin Kormann  
Theresa Melson  
Phoebe Neseth  
Edward O'Connell  
John Olivieri  
Phoebe Rolen  
Anne Sheehan  
Lynette Wuensch

Workgroup members Jeffrey Brown, Ron Clements, Mark Dix, Rafael Martinez, and Chris Stone were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Trisha L. Lindsey, Executive Director, Common Interest Community Board  
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator  
Raven Custer, Administrative Coordinator

Mel Jones, Bob McNab, Terry Clower, Matt Vogel, Keith Waters, and Aliana Cheguer were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:03 a.m.

**Call to Order**

Ms. Trigiani advised the Workgroup of the emergency evacuation procedures.

**Emergency  
Evacuation  
Procedures**

Mr. Brumfield moved to approve the agenda. Ms. Rolen seconded the motion, which was unanimously approved by: Trigiani, Alcorn, Bach, Bailey, Baldry, Beveridge, Brumfield, Diercks, Frame, Gillespie, Horner, Kacani, Kormann, Melson, O'Connell, Rolen, Sheehan, and Wuensch.

**Approval of Agenda**

Structural Integrity and Reserves Study (SB 740) Workgroup  
March 15, 2023

Staff were informed of minor corrections that were needed to draft meeting minutes for the February 7, 2023, Structural Integrity and Reserves Workgroup meeting.

**Approval of Minutes**

Mr. Frame moved to approve the February 7, 2023, Structural Integrity and Reserves Workgroup meeting minutes as amended. Mr. Brumfield seconded the motion which was unanimously approved by: Trigiani, Alcorn, Bach, Bailey, Baldry, Beveridge, Brumfield, Diercks, Frame, Gillespie, Horner, Kacani, Kormann, Melson, O'Connell, Rolan, Sheehan, and Wuensch.

Ken Cordo was present and introduced himself to the Workgroup.

**Public Comment Period**

There were no members of the public present who wished to address the Workgroup.

Ms. Neseth arrived at 10:08 a.m.

**Arrival of Workgroup Member**

Ms. Lindsey, Ms. Trigiani, and Ms. Jones thanked the members of the Workgroup, the Board staff, and the meeting facilitators for their time and effort with the workgroup.

**Discussion**

The Workgroup took time to review the draft final recommendations before beginning discussion.

Mr. Olivieri arrived at 10:23 a.m.

**Arrival of Workgroup Member**

After taking time to review the draft final recommendations, the Workgroup began discussion on the report.

**Discussion Continued**

The Workgroup recessed from 12:20 p.m. to 12:57 p.m.

**Recess**

The Workgroup continued discussion on the draft final recommendations.

**Discussion Continued**

Ms. Neseth departed from the Workgroup meeting at 1:56 p.m.

**Departure of Workgroup Member**

The Workgroup was provided with (i) SB 740; (ii) a letter from the Honorable Scott A. Surovell, patron of SB 740; (iii) current versions of

**Resources and Information**

Structural Integrity and Reserves Study (SB 740) Workgroup  
March 15, 2023

applicable common interest community laws and regulations; (iv) provisions of the Uniform State Building Code; (v) CIC Board guidelines for development reserve studies for capital components; (vi) various CAI publications related to reserve studies, condominium and condominium safety, infrastructure in community associations, and state volunteer immunity laws; (vii) Florida SB 4-D; (viii) additional news and journal articles in relation to Champlain Towers; and the Virginia Common Interest Community Survey.

Ms. Lindsey provided the Workgroup with a tentative table of contents for the final report. **Other Business**

The Workgroup discussed the next steps for the final report.

Mr. Alcorn departed from the Workgroup meeting at 2:03 p.m. **Departure of Workgroup Member**

After discussion, Mr. Brumfield moved to approve recommendations provided by the Workgroup. Ms. Gillespie seconded the motion, which was unanimously approved by: Trigiani, Bach, Bailey, Baldry, Beveridge, Brumfield, Diercks, Frame, Gillespie, Horner, Kacani, Kormann, Melson, O'Connell, Olivieri, Rolen, Sheehan, and Wuensch. **Other Business Continued**

Ms. Trigiani reminded Workgroup members to complete their conflict of interest forms **Complete Conflict of Interest Forms**

There being no further business, the meeting adjourned at 2:28 p.m. **Adjourn**

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Matt Durham, Chair

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Demetrios J. Melis, Secretary

# Appendix H

## Virginia Common Interest Community

### Survey

## Appendix H: Virginia Common Interest Community Survey

In early 2023, the Center for Regional Analysis team conducted an electronic format survey of common interest communities registered with the Department of Professional and Occupational Regulation (DPOR). The survey instrument was designed based on the input and guidance from the Work Group. Invitations to participate, along with reminders, were sent by DPOR.

The survey of common interest communities was conducted in late January to early February 2023. The database provided by DPOR included 2,696 unique records. The report below is based on 396 responses received in time for inclusion in this analysis representing a response rate of 14.7%. For any voluntary survey, a rule of thumb suggests that 10% is a reasonable response rate. The respondents to this survey over-represent smaller communities. The DPOR database shows 65.7% of registered associations have 100 or fewer units. That size community represents 68.4% of the survey respondents. The notable difference is that the sample does not include the largest properties with more than 2,000 units, mostly condominium properties located in Northern Virginia. With that caution in mind, having an over-weight of smaller associations is desirable for this analysis given that smaller associations are more likely to experience financial and administrative challenges, and would be more challenged by any notable changes in state law or regulation.

The following are highlighted key findings associated with common interest community finances separated by those that are condominium only properties and those that are single-family or mixed type communities. Results of the full survey can be found in a separate report.

### Key Survey Findings

- In general, single-family and mixed unit communities are self-managed.
  - Only 15% of single-family or mixed unit communities use a professional management company or agent to run their association. Almost 60% of condominium associations use a professional management company or agent.
- The vast majority of common interest communities have small operating and capital budgets.
  - 70.2% of single-family and mixed communities have an association operating budget of less than \$50,000 per year. Condominium associations have higher operating budgets, but 68.9% operate on less than \$250,000 per year.
  - 84.4% of single-family or mixed unit properties have capital budgets of less than \$50,000 per year. This is also the case for more than half of the condominium only associations who responded to this survey.
- Regular annual dues are kept low by most communities.
  - 88% of single-family or mixed units communities have dues that are \$200 per month. (65% are less than \$100 per month.)

- 51.3% of condominium associations charge \$300 or less per month in dues.
- Over 80% of association boards are able to increase regular dues as needed, which is mainly tied to meeting increased operating expenses and increasing contributions to reserve accounts.
- More than 80% of condominium associations and 90% of single-family or mixed unit properties operate a neutral budget or with minor year-to-year surpluses/deficits that balance out.
  - 5% of responding condominium associations report that they usually run a substantial operating deficit.
- Relatively few common interest communities in Virginia (17.6% condominium, 20.2% single-family or mixed) have written policies on reserve requirements.
- Most condominium associations have recently completed a reserve study. However, 13.5% of condominium survey respondents reported they had never completed a reserve study.
  - 39% of condominium associations report that a large amount of additional reserve funds are needed.
  - Most associations report that they can meet recommended reserve levels within five years.
  - About half of all associations have a targeted ratio of reserves to reserve requirements.
  - Roughly half of condominium-only associations include capital component elements in their annual operating budget.



## COMMON INTERST COMMUNITY ONLINE SURVEY QUESTIONS

### Findings for Properties By Type

**Total Responses by Deadline: 361 total, 289 SF, 69 Condo Only**

**Condos Only # condo units reported =>5**

1. What is the name of your association? [open ended]
2. Please identify the type of housing in your association? (Check all that apply and indicate the number of units). The count should Include the sum of all units: occupied, vacant, improved lots without a house (for single family developments).

#### Condos

Minimum # Units	5
Maximum # Units	1,011
Average # Units	107.3
% Respondents <15 units	24.6%
% Respondents 16 Units to 32 Units	17.4%
% Respondents 33-60 Units	23.2%
% Respondents 61-128 units	13.1%
% Respondents 129-216 units	11.6%
% Respondents 217 units-600 units	5.8%
% Respondents >600 Units	4.3%
% Respondents w Condo and SFA / SFD units	36.2%

#### Single Family (Attached & Detached)

Minimum # Units	3
Maximum # Units	2,722
Average # Units	102.4
% Respondents <20 units	25.9%
% Respondents 20 Units to 50 Units	39.8%
% Respondents 51-100 Units	16.5%
% Respondents 101-200 units	8.4%
% Respondents 201-500 units (16 properties)	5.6%
% Respondents 501-1000 units (8 properties)	2.4%
% Respondents >1000 Units (4 properties)	1.4%

3. What year was your association established? [open ended]

Condo	SF
Avg 1990	Avg 1992

4. Does your association utilize the services of a management firm or agent? [Y/N]

Condo	SF
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63.8% Yes	16.6% Yes
-----------	-----------

5. How many members/units are not in good standing?

Condo	SF
Avg: 1.6	Avg: 4.0

6. How many members are on your association board?

Condo	SF
Avg: 4.9	Avg: 4.9

7. What was the association's operating budget in the most recent fiscal year? (Choose one)

	Condo	SF
<\$50,000	29.4%	68.4%
\$50,001-\$100,000	16.2%	16.3%
\$100,001 - \$250,000	22.1%	9.0%
\$250,001 - \$500,000	19.1%	3.1%
\$500,001 - \$1,000,000	7.4%	1.4%
\$1,000,001 - \$2,500,000	4.4%	0.7%
>\$2,500,000	1.5%	1.0%

8. What was the association's capital budget in the most recent fiscal year? (Choose one)

	Condo	SF
<\$50,000	52.9%	83.4%
\$50,001-\$100,000	23.5%	9.7%
\$100,001 - \$250,000	11.8%	4.5%
\$250,001 - \$500,000	5.9%	1.0%
\$500,001 - \$1,000,000	0%	0.4%
\$1,000,001 - \$2,500,000	4.4%	0.0%
>\$2,500,000	1.5%	1.0%

9. How much are regular dues/assessment for the operation of the association? (Choose one).  
If regular dues/assessments are invoiced on an annual basis, please choose the option that best represents the monthly average. Do not include discounts for advanced payments

	Condo	SF
<\$100 per month	17.7%	64.9%
\$101-\$200 per month	11.8%	23.6%
\$201 - \$300 per month	19.1%	6.3%
\$301 - \$500 per month	29.4%	3.8%
\$501 - \$750 per month	13.2%	0.7%
\$751 - \$1000 per month	8.8%	0.7%
>\$1,000 per month	0%	0%

10. What percentage of the regular dues/ assessment is usually budgeted for regular operating expenditures? (Choose one)

	Condo	SF
<50%	6.0%	14.3%
51%-60%	7.5%	7.3%
61%-70%	14.9%	11.2%
71%-80%	38.8%	20.2%
81%-90%	16.4%	19.5%
91%-95%	4.5%	11.5%
>95%	11.9%	16.0%

11. What proportion of the monthly assessment is allocated to the reserve (capital) account? (Choose one)

	Condo	SF
<5%	8.8%	25.8%
5%-10%	17.7%	15.7%
11%-15%	10.3%	9.8%
15%-20%	16.2%	17.4%
21%-30%	36.8%	11.5%
31%-50%	8.8%	13.2%
>50%	1.5%	6.6%

12. When was the last time there was an increase in regular dues/assessments? (Choose one)  
[MC, select one]

	Condo	SF
This year	63.2%	34.5%
Last year	13.2%	15.7%
2-5 years ago	13.2%	26.8%
6-10 years ago	8.8%	9.0%
More than 10 years ago	1.5%	13.9%

13. What was the reason(s) for the most recent increase in regular dues/assessments? (Mark all that apply) Number of responses shown

	Condo	SF
Increased management fees	18	17
Increased operating expenses	57	206
Increasing capital expense	23	52
Increasing reserves	40	95
Other (specify)	2	42

# COMMON INTEREST COMMUNITY ONLINE SURVEY

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Start of Block: Default Question Block

Introduction

## COMMON INTEREST COMMUNITY ONLINE SURVEY QUESTIONS

The Virginia Legislature in 2022 instructed the Virginia Department of Professional and Occupational Regulation (DPOR) to convene an Industry Stakeholder Group for the purpose of reviewing current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in Common Interest Communities (CICs) and to make recommendations on the need and parameters for any changes to requirements regarding capital reserves held by CICs. CICs are administered and governed by one of the following: property owners' association, condominium unit owners' association, or real estate cooperative association (also called a proprietary lessees' association). In a CIC, individuals own a lot or unit in a community and may have a shared ownership with other owners of the common areas. Property in a CIC, including private homes or units, is subject to governing documents that organize the community, provide for the governance and administration of the community, establish the financial oversight of the operations of the community, and determine the rights and obligations of individuals, the board, and the community organization. Purchasing a lot or unit in a CIC including covenants and restrictions in the governing documents as well as assessments to fund the community organization and maintain common interest property.

This survey is designed to gather information for the Industry Stakeholder Group to support their discussions and deliberations. The survey is being conducted by a team of researchers from three major state universities, George Mason University, Old Dominion University, and Virginia Tech. Any information you provide will be treated as confidential. Findings from this research will only be reported in aggregate form.

We expect that the survey will take about **30 minutes** of your time to complete.

If you have any questions, you may contact the study's Principal Investigator, Dr. Terry Clower, at [DPORreservesurvey@gmail.com](mailto:DPORreservesurvey@gmail.com).

If you are a management company, please submit one survey for each of your communities.

The survey instrument is being administered through the Qualtrix platform. Once you begin, you will have the opportunity to pause and restart later as well as go back in the survey. Finalized surveys, however, cannot be changed.

If you are a management company submitting multiple surveys, make sure to click the right arrow at the end of the survey to see the "submission complete" page before submitting another survey.

**PLEASE SUBMIT YOUR RESPONSE BY JANUARY 23rd, 2023**

---

Page Break

Q1 What is the name of your association?

---

Q3 What year was your association established?

---

Q4 Does your association utilize the services of a management firm or agent?

Yes (1)

No (2)

Q5 Please identify the number of Multifamily units (multiple units in a building where units are stacked) in your association.

(Please Enter Numeric Values Only)

---

Q6 Please identify the number of Single Family Attached units (townhomes, duplex, triplex or similar) in your association.

(Please Enter Numeric Values Only)

---

Q7 Please identify the number of Single Family Detached units in your association.

(Please Enter Numeric Values Only)

---

Q8 Please identify the number of number of improved lots without a residence in your association.

(Please Enter Numeric Values Only)

---

Q9 How many members/units are NOT in good standing in your association?

(Please Enter Numeric Values Only)

---

Q10 How many members are on your association board?

(Please Enter Numeric Values Only)

---

---

Q11 What was the association's operating budget in the most recent fiscal year?

- a. <\$50,001 (1)
- b. \$50,001-\$100,000 (2)
- c. \$100,001 - \$250,000 (3)
- d. \$250,001 - \$500,000 (4)
- e. \$500,001 - \$1,000,000 (5)
- f. \$1,000,001 - \$2,500,000 (6)
- g. >\$2,500,000 (7)

---

Q12 What was the association's capital budget in the most recent fiscal year?

- a. <\$50,001 (1)
  - b. \$50,001-\$100,000 (2)
  - c. \$100,001 - \$250,000 (3)
  - d. \$250,001 - \$500,000 (4)
  - e. \$500,001 - \$1,000,000 (5)
  - f. \$1,000,001 - \$2,500,000 (6)
  - g. >\$2,500,000 (7)
-

Q13 How much are regular dues for the operation of the association?

If regular dues are invoiced on an annual basis, please choose the option that best represents the monthly average. Do not include discounts for advanced payments.

- a. < \$101 per month(1)
  - b. \$101-\$200 per month (2)
  - c. \$201 - \$300 per month (3)
  - d. \$301 - \$500 per month (4)
  - e. \$501 - \$750 per month (5)
  - f. \$751 - \$1000 per month (6)
  - g. >\$1,000 per month (7)
- 

Q14 What percentage of the regular dues is usually budgeted for regular operating expenditures?

- a. < 51% (1)
  - b. 51%-60% (2)
  - c. 61%-70% (3)
  - d. 71%-80% (4)
  - e. 81%-90% (5)
  - f. 91%-95% (6)
  - g. >95% (7)
-



Q15 What percentage of the regular revenue from any source (not special assessments) is allocated to the reserve (capital) account?

- a. <5% (1)
  - b. 5%-10% (2)
  - c. 11%-15% (3)
  - d. 16%-20% (4)
  - e. 21%-30% (5)
  - f. 31%-50% (6)
  - g. >50% (7)
- 

Q16 When was the last time there was an increase in regular dues?

- a. This year (1)
  - b. Last year (2)
  - c. 2-5 years ago (3)
  - d. 6-10 years ago (4)
  - e. More than 10 years ago (5)
-

Q17 What was the reason(s) for the most recent increase in regular dues? [Mark all that apply]

- Increased management fees (1)
  - Increased operating expenses (2)
  - Increasing capital expense (3)
  - Increasing reserves (4)
  - Other (specify below) (5)
- 

-----

Q18 Do you anticipate needing to increase the regular dues in the coming 24 months?

- Yes (1)
  - No (2)
-

Q19 Has the board found it difficult or been unable to increase REGULAR DUES even when needed to address an OPERATING budget gap?

Choose one that best describes your association's circumstance. The next question addresses Capital budget gaps.

- a. No one likes a fee increase, but a majority of members will support needed fee increases. (1)
  - b. The board must sometimes approve a regular fee increase over the objections of a majority of members. (2)
  - c. The board must frequently/always approve a regular fee increase over the objections of a majority of members. (3)
  - d. The board cannot increase regular fees without the majority support of members. (4)
  - e. The board sometimes cannot secure enough board member support to increase regular fees to address budget gaps. (5)
  - f. The board frequently/always cannot secure enough board votes for a regular fee increase to address budget gaps. (6)
- 

Q20 Has the board found it difficult or been unable to increase REGULAR DUES even when needed to address CAPITAL SPENDING OR RESERVE needs?

Choose one that best describes your association's circumstance.

- a. No one likes a fee increase, but a majority of members will support needed fee increases. (1)
- b. The board must sometimes approve a regular fee increase over the objections of a majority of members. (2)
- c. The board must frequently/always approve a regular fee increase over the objections of a majority of members. (3)
- d. The board cannot increase regular fees without the majority support of members. (4)
- e. The board sometimes cannot secure enough board member support to increase regular fees to address budget gaps. (5)

---

Q21 Has the board found it difficult or been unable to levy SPECIAL ASSESSMENTS even when needed to address CAPITAL SPENDING OR RESERVE needs?

Choose one that best describes your association's circumstance.

- a. No one likes a fee increase, but a majority of members will support needed SPECIAL ASSESSMENTS. (1)
  - b. The board must sometimes approve a SPECIAL ASSESSMENT over the objections of a majority of members. (2)
  - c. The board must frequently/always approve a SPECIAL ASSESSMENT over the objections of a majority of members. (3)
  - d. The board cannot impose a SPECIAL ASSESSMENT without the majority support of members. (4)
  - e. The board sometimes cannot secure enough board support member support to set a SPECIAL ASSESSMENT to meet community needs. (5)
- 

Q22 Does your association's governing documents include a maximum cap on assessments?

- Yes (1)
  - No (2)
- 

Q23 Does your association's governing documents include a maximum cap on annual assessment increases?

- Yes (1)
  - No (2)
-

Q24 Almost every association has good financial years and others that are not as good. Over the last five years, does your association: (Choose one)

- a. Usually run a substantial operating surplus (1)
  - b. Usually run a small surplus (2)
  - c. Usually is budget neutral, small surplus or deficit that averages out across years (3)
  - d. Usually run a small deficit (4)
  - e. Usually run a substantial deficit (5)
- 

Q25 If your association usually or frequently runs a deficit of any size, how are funding gaps filled? (Check all that apply)

- a. Cut operating expenses (1)
  - b. Delay or cut capital expenses (2)
  - c. Use operating reserves (3)
  - d. Use capital reserves (4)
  - e. Have special assessments (5)
  - f. None/Does not apply (7)
  - g. Other (specify)\_\_\_\_\_ (6)
-

Q26 Does your association have a written resolution or policy on a minimum reserve funding levels with respect to the recommendations of a reserve study?

Yes (1)

No (2)

---

Q27 When was the last reserve study completed for your association?(Choose one)

a. Within the past 12 months (1)

b. 1 year – 3 years ago (2)

c. 4 years – to 6 years ago (3)

d. 7 years – 10 years ago (4)

e. 11 years – 15 years ago (5)

f. 16 years to 20 years ago (6)

g. > 20 years (7)

h. Never completed a reserve study. (Questions regarding reserve study skipped if this option is chosen) (8)

*Skip To: Q36 If When was the last reserve study completed for your association?(Choose one) = h. Never completed a reserve study. (Questions regarding reserve study skipped if this option is chosen)*

---

Q28 What were the general conclusions of your most recent reserve study? (Select one that best describes your current situation):

- a. Reserves are adequate for anticipated needs (1)
  - b. A small amount of additional funds are needed (2)
  - c. A large amount of additional funds are needed (3)
  - d. There are critical needs and no reasonable expectations that current members can afford to meet these needs. (4)
- 

Q29 Did the last reserve study result in an increase in regular dues?

- Yes (1)
  - No (2)
- 

Q30 Did the last reserve study result in a special assessment?

- Yes (1)
  - No (2)
- 

Q31 Does your reserve study include a line item for building inspections of common property by a structural engineer?

- Yes (1)
  - No (2)
-

Q32 Does your annual budget reflect the contributions necessary to achieve the full amount of recommended reserves in the next:

- a. Recommended reserves are already in place (1)
- b. < 1 year to 5 years (2)
- c. 6 to 10 years (3)
- d. Longer than 10 years? (4)
- e. The annual budget does not include sufficient contributions to meet recommended reserves in the foreseeable future. (5)

*Skip To: Q36 If Does your annual budget reflect the contributions necessary to achieve the full amount of recomme... = a. Recommended reserves are already in place*

---

Q33 If your annual budget does not reflect the amounts necessary to achieve the recommended reserves, does your association have the target ratio of actual reserves to recommended reserves?

- Yes (1)
- No (2)

*Skip To: Q36 If If your annual budget does not reflect the amounts necessary to achieve the recommended reserves,... = No*

---

Q34 Is your association at the target funding ratio for reserves?

- Yes (1)
- No (2)

*Skip To: Q36 If Is your association at the target funding ratio for reserves? = Yes*

---



Q35 If your association is not at the target funding ratio, when do you expect to be at the target funding ratio?

- a. < 1 year to 5 years (1)
  - b. 6 to 10 years (2)
  - c. Longer than 10 years? (3)
- 

Q36 Does your annual budget contain: [Check all that apply]

- a. Current estimated replacement costs of capital components of your association (1)
  - b. Estimated remaining life of capital components of your association (2)
  - c. Estimated useful life of capital components of your association (3)
  - d. The current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components (4)
  - e. The expected contributions to the reserve fund for the fiscal year? (5)
-

Q37 When was the last time that your association's governing documents were updated?  
(Choose one)

- a. Within the past 12 months (1)
  - b. 1 year ago – 5 years ago (2)
  - c. 6 years ago – 10 years ago (3)
  - d. 11 years – 20 years ago (4)
  - e. > 20 years (5)
  - f. Never (6)
  - g. Don't know (7)
- 

Q38 Are your board members covered by a liability insurance policy related to their actions on behalf of the association?

- Yes (1)
  - No (2)
-

Q39 Which of the following are significant challenges for your association? [Choose any that apply]

- a. Does not have sufficient funding for operations (1)
  - b. Does not have sufficient reserves for current capital requirements (2)
  - c. Does not have sufficient reserves for future capital requirements (3)
  - d. Member participation is frequently below required levels for a quorum at annual meetings (4)
  - e. We cannot fill all volunteer board spots (5)
  - f. Other (specify) \_\_\_\_\_ (6)
- 

Q40 Are there other issues you would like to bring to the attention of the stakeholder group?

---

End of Block: Default Question Block

---

Start of Block: Block 1

Q45 You have reached the end of the survey. If you have finalized your answers, select the "next" arrow to submit.

End of Block: Block 1

---

# Appendix I

## Public Comments

# SENATE OF VIRGINIA

**SCOTT A. SUROVELL**  
36TH SENATORIAL DISTRICT  
PART OF FAIRFAX, PRINCE WILLIAM,  
AND STAFFORD COUNTIES  
POST OFFICE BOX 289  
MOUNT VERNON, VIRGINIA 22121  
(571) 249-4484



COMMITTEE ASSIGNMENTS:  
COMMERCE AND LABOR  
JUDICIARY  
PRIVILEGES AND ELECTIONS  
REHABILITATION AND SOCIAL SERVICES  
TRANSPORTATION

July 21, 2022

Lucia Anna "Pia" Trigiani  
Structural Integrity and Reserves Work Group  
112 South Alfred Street  
Alexandria, VA 22314

Re: Structural integrity task force

Dear Chair Trigiani:

I am writing to you regarding my views on the matters before the Structural Integrity Task Force. I ask that you all seriously consider a few ideas that guided me when I introduced SB740 in the 2022 Regular Session of the General Assembly.

First, the Surfside Condo collapse exposed a problem that been lingering for some time. In 2017, the River Towers Condominium nearly collapsed in the Mt. Vernon area after a steel girder failed due to long-term corrosion relating to lack of maintenance or careful inspection. We know the age of many multifamily buildings, but we do not know the entire scope of the deferred maintenance problem in Virginia. We need that information aggregated because problems that can be measured are problems that can be solved.

Second, the lack of maintenance on buildings and common interest communities generally is a function of several variables including:

- (1) Refusal of associations to raise dues and maintain adequate reserves;
- (2) A lack of transparency about reserve shortfalls and maintenance issues;
- (3) Insufficient inspections by localities;
- (4) A lack of professional building management; and
- (5) Zero accountability for boards that fail to honor their fiduciary responsibilities to other property owners.

My analysis is that these problems could be solved by enhanced insurance products and assigning legal responsibility to community governing boards instead of asking local governments to assume full responsibility for frequent or robust inspections. Local governments are often underfunded and unaccountable due to sovereign immunity, and no one's safety in their home should be dependent on their zip code.

The Virginia homeownership rate is sixty-six percent, and the home is the primary asset of most households. Due to current Virginia Law, the loss of a home in a common interest community is the only asset that a Virginian cannot fully insure against risk of loss. This is unjust and it must change.

These are the solutions I think should be considered:

**Increased Transparency**

- All reserve studies should be filed with the state upon completion;
- A state agency should maintain a long-term, searchable, public database of multi-family residential buildings with dates of construction, major renovation, current reserves, stated needed reserves, stated reserve shortfalls, and all filed reserve studies; and
- By the year 2027, any residential real estate purchase in a common interest community should include a specific disclosure regarding the unfunded portion of reserves divided by the number of units in a community so the purchaser can see what they are buying into.

**Liability Changes**

- The state law providing immunity to board members should only apply to the extent the board has acted consistent with recommendations in all reserve studies and made repairs consistent with building inspections;
- The Bureau of Insurance should require any entity providing liability insurance to a community association to also provide coverage for the loss of all covered assets from the negligence of board members and not solely from losses caused by earthquake, flood or fire; and
- All community associations should be required to carry insurance to cover the loss of all assets from any loss other than willful, malicious misconduct by the Board.

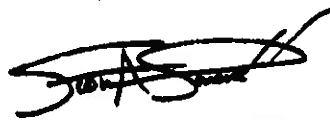
**Regulate Building Management**

- Require licensing of building managers or minimum standards for individuals responsible for managing buildings of a certain size or value including liability insurance requirements.
- Prohibit association self-management of structures over a certain size or dollar value unless building manager possesses license or certification above.

With these incentives in place, the insurance industry could take the lead on building inspection and documenting compliance with reserve studies. Requiring community associations that might otherwise avoid maintenance to bear the cost of such insurance will allow markets to correctly price the risk of these living arrangements. Doing so will replace our current system of inefficiently socializing the inspection cost across all taxpayers and writing off future tragedies caused by the insufficient inspection or repairs through board immunity and sovereign immunity.

Let me know if I can provide any further thoughts or assistance.

Sincerely Yours,



Senator Scott A. Surovell  
36<sup>th</sup> District

cc: Senator George L. Barker, Chair, General Laws Committee  
Mr. Demetrios J. Melis, Director, Department of Professional and Occupational Regulation  
Ms. Trisha L. Lindsey, Executive Director, Common Interest Community Board

Re: Chapter 421

Denise Husband <DeniseHusband@msn.com>

Mon 3/13/2023 9:04 AM

To: Haughwout, Joseph (DPOR) <Joseph.Haughwout@dpor.virginia.gov>

Dear Mr. Haughwout,

Thank you for sending the information on Act 412 as residents in our Common Interest Community have been very interested in learning more about the working group study.

Many of the study considerations are relevant to our community as we are a 55+ Active Adult community under development with an HOA Board that is Developer and Builder controlled for several more years until the development is complete at which time residents will be elected to the Board.

We are concerned on the adequacy of current laws addressing standards for our community for the following reasons:

(i) Signed and sealed *as-built drawings* required for the Developer's bond release were done years before construction completion and the plans are not accurate regarding final site grading for stormwater facilities. In one instance, as-built plans show 6' deep wet ponds as designed and approved but these ponds do not have water in them and are eroding significantly. As-builts for bioretention ponds do not have the required mulch filter bed or all the plant material required for infiltration per VA DEQ regulations. Unlike many jurisdictions in Virginia, DEQ Stormwater approvals and inspections are performed by Frederick County, so the State relies on the County to administer the process. The County has released bond money without the required documents and inspections on several phases of development and our HOA is now responsible for the cost of correcting these facilities so they function in accordance with the site construction plans as designed and approved per State and County code .

(v) The Developer requested of the County that our public streets be made private which was approved but was not acknowledged on sales brochures per County code so consumers were unaware of HOA financial responsibility for private street maintenance. Our Board/Developer is not properly *budgeting of reserves* for these roads as required in our County code for private streets. These reserves were not kept in a separate account until residents repeatedly requested that the Board adhere to the County code requirements for these reserves.

(vi) The Site Developer deeded common area stormwater facilities and retaining walls as well as roads and sidewalks to our HOA years prior to completion of construction and bond release. This is a concern as our HOA thence, per these deeds, became responsible for inspections, corrections, maintenance and *liability* of these areas when in County code this is the responsibility of the developer until bonds are released to ensure that the site is constructed per all code requirements. Because the Developer did not maintain these facilities prior to bond release, we are now faced with a financial burden for correcting per state and local regulations.

(vii) The lack of *inspection* reports for constructed facilities is of concern, especially since a 12' high retaining wall behind several homes in our community developed structural cracks and displaced masonry. Not having code required construction inspections for HOA walls, stormwater, roads and other structures is a concern if there is a failure as occurred in Maryland with the Kentlands retaining wall and in Hallwood Place in Fort Washington, Maryland, where two townhomes had to be demolished due to retaining wall failure. The number of homes in our community built with high retaining walls to create a backyard is disconcerting given the similarity to Fort Washington. Additionally, we cannot obtain the certified third-party *inspection* reports per County code that our streets were constructed in accordance with VDOT standards but have numerous streets and sidewalks that are not constructed per these regulations.

(vii) The *qualifications of county and developer building inspections* is of considerable concern as they passed homes for *certificates of occupancy* (i) when many sill plate straps and bolts were not installed/fastened per BOCA Code. This was discovered when a resident hired a contractor to install a deck and the contractor would not complete the work as he found that the building was not properly anchored to the foundation. We were told the Building Developer was installing properly on later construction but when word got out about this issue, the Developer offered to inspect potentially affected homes with basements and correct per code. This resulted in major inconvenience as residents had to vacate homes with dry wall deconstruction, etc. for considerable time. Those with slab construction which were more difficult to inspect and correct were not approached by the Developer.

(xi) Our *manager qualifications* regarding budgeting, reserves, knowledge of codes, communication, etc. is of concern to residents. As an example, our manager has repeatedly over the past few years stated she is not familiar with the local laws, ordinances and regulations even when it was brought to her attention the deed information, inspections, bond release, etc. Our manager has made inaccurate or misleading representations to our community in numerous instances.

Additionally, there are many cases where the HOA Management is not working in the best financial interests of our HOA and residents in regards to obtaining competitive bids for contracts, as well as not including upset limits, end dates and hourly rates for additional services. In one case regarding contracts, there was impropriety as our HOA Association Manager works part time for a Board member/Developer's roofing company. What began as a storm damage insurance repair, the Board member//Developer's roofing company assessed and stated new roofs were required for the storm damaged building as well as an additional building with no storm damage. Not only was the contract poorly written, but the Developer's roofing company subcontractors who were not identified as required in the contract, did not install correctly and had to remove and replace the roofs again. What began as a \$30,000 insurance repair, with change orders and other contracts ballooned in cost at this point to over \$300,000 which was not in our HOA reserves. We also are in the process of paying for a building envelope repair that our HOA manager cannot adequately explain the scope of work but is going to cost the HOA at least \$150,000.

These are just a few examples that relate to the inadequacies in current laws that our community is experiencing. We are interested in whether the study group will be addressing these types of Common Interest Community issues and if not, are requesting that the study be expanded to consider adequacy of laws as they relate to consumer protection as well as public health, safety and welfare within our community.

I would be happy to discuss in further detail and submit documentation/photos regarding these issues as explained above if requested.

Thank you,

Denise Husband  
Trilogy at Lake Frederick  
(302) 545-1577

# Appendix J

## CIC Board Guidelines for the Development of Reserve Studies for Capital Components





# **GUIDELINES FOR THE DEVELOPMENT OF RESERVE STUDIES FOR CAPITAL COMPONENTS**

**ADOPTED BY THE  
COMMON INTEREST COMMUNITY BOARD  
September 5, 2019**

## PREFACE

Chapters 33 and 44 of the 2019 Virginia Acts of Assembly, which resulted from the passage of House Bill 2030 and Senate Bill 1538, direct the Common Interest Community Board (“Board”) to “...*develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.*”

In accordance with the General Assembly’s directive, the Board convened a committee of industry experts including Board members to assist in developing these guidelines for the development of reserve studies for capital components, as defined in the Code of Virginia. This document reflects the significant input and contributions of those industry professionals experienced in the development of reserve studies for common interest communities, and generally reflects standard and accepted industry practice.

This document is intended to provide useful information and guidance to members of the public, including members of association governing boards and those who provide management services to associations, regarding developing reserves studies. This document is not intended to regulate the development of or define a “standard of care” for reserve studies, and does not prescribe, or proscribe, any specific method for developing such studies.

## Introduction

Throughout the United States various forms of real property ownership in which multiple homeowners agree to share in the common ownership of certain real property have emerged for mutual benefit and enjoyment. Developers have employed this approach to, among other things, create neighborhoods, increase density, comply with local zoning and proffer requirements, and allow neighbors to establish shared services, facilities and expenses, take advantage of economies of scale and sustain and enhance property values.

In Virginia, developments of this type are called *common interest communities* (CICs), and are administered and governed by one of the following: property owners' association, condominium unit owners' association, or real estate cooperative association. Generally, in a CIC individuals own a lot or unit in the community and have shared ownership with other owners in the remaining real property, the *common area or common elements*. Real estate cooperatives are somewhat different in that the real property is owned by a corporation, and the membership of the association is made up of proprietary lessees, who are entitled to exclusive use and possession of a unit through a proprietary lease from the company.

CICs have three general characteristics:

1. Property is subject to *governing documents* that organize the community, provide for the administration of the community and common area or common elements through an association, and establish the rights and obligations of the association, individual owners, and the association's governing board.
2. By virtue of ownership, membership in the association is mandatory and automatic.
3. CIC members are required to pay *assessments* to fund the association and maintain the property.

In a CIC, responsibility for maintenance and upkeep of the property is established by the community's governing documents. Generally, these responsibilities are divided between the association and the individual lot or unit owners. Items that the association is obligated to maintain, repair, and replace, regardless of whether such items are part of the common area or common elements, and for which the association governing board has determined funding is necessary, are called *capital components*.

The number and nature of capital components vary from community to community. For some communities there may only be a few components, such as a shared road or entrance feature, signage for the community, and landscaping. Other communities may have significantly more components, including structures such as parking garages or recreational facilities (e.g.

exercise rooms, pools, tennis courts). In addition, many communities have stormwater management facilities, which are often required to be installed as a measure to protect the environment. These might take the form of a pond or other waterway in the community. Stormwater management facilities, if part of the common area or common elements, are the responsibility of the association to maintain. A list of typical common area or common elements components is located at Appendix C. This list is not exhaustive, and does not reflect every type of component that may be found in a community.

In order to ensure capital components are properly maintained, repaired, and timely replaced, associations establish a *reserve fund* consisting of a budgeted portion of monies collected from assessments imposed on lot or unit owners. Funds in reserve are set aside for the dedicated purpose of paying for costs to repair and replace capital components when the need arises. In this sense, a reserve fund is like a “piggy bank.” By establishing and funding a reserve, associations can lessen the potential of having to impose costly special assessments to pay for repairing or replacing capital components.

Toward this end, Virginia law requires the governing board of an association to conduct a study, called a *reserve study*, periodically to determine the necessity and amount of reserves required to repair, replace and restore the capital components. A reserve study is a capital budget planning tool used to determine the physical status and repair or replacement cost of a community’s capital components, and an analysis of an association’s funding capacity to maintain, repair, and replace capital components.

Sections 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia state, in part<sup>1</sup>:

Except to the extent otherwise provided in the [governing documents], the [governing board] 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 [applicable section of the Code of Virginia];
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the [governing board] deems necessary to maintain reserves, as appropriate.

In addition, these provisions in the Code stipulate that:

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<sup>1</sup> Note: These provisions of the Code of Virginia will be recodified effective October 1, 2019. See Appendix A for the complete sections of the Code.

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, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in [applicable section of the Code of Virginia];
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.

Because an association governing board has a fiduciary duty to manage association funds and property, establishing a reserve fund and making provision in the association budget for reserves is important. The information provided by a reserve study aids association members in understanding the physical condition of the property, and the financial condition of the association, in order to allow for adequate planning. A reserve study can serve as an important tool for the association to balance and optimize long-term property values and costs for members, as reserve planning helps assure property values by protecting against decline in value due to deferred maintenance and inability to keep up with aging components.

By establishing a reserve fund and maintaining sufficient reserves, a governing board can reduce the need to impose special assessments on association members when it comes time to replace capital components, particularly if the replacement cost is high. Even if a community only has a limited number of components, such as a simple road or driveway, setting aside funds in advance will help guard against financial shock when repair or replacement is needed. In addition, it creates a more equitable balance between newer owners in a community, and older owners, as newer owners will not have to assume the burden of the cost to repair or replace older components in the community.

Moreover, a reserve study is beneficial to purchasers of property in a CIC. A reserve study can aid in the evaluation of the value of property being purchased by knowing the condition of the capital components, and show a more accurate and complete picture of the association's financial position to handle the expense of maintaining the capital components.

In addition to establishing a reserve fund for capital components, associations should also consider establishing an operating reserve for budget overages. An operating reserve provides the association with funds in case of unexpected budget overages or unforeseen operating expenses. Replacement reserve funds should not be used to cover unanticipated operating expenses.

## **The Basics of Reserve Studies**

### *Components of a Reserve Study*

There are two components of a reserve study: (i) a ***physical analysis*** and (ii) a ***financial analysis***. The physical analysis provides information about the physical status and the repair or ***replacement cost*** of components the association is obligated to maintain. The physical analysis entails conducting an ***inventory*** of components, an assessment of component condition, and ***life and valuation estimates***. The financial analysis assesses the association's reserve income and expenses, by examining the reserve ***fund status***, measured in cash or ***percent funded***, and recommending an appropriate contribution for the fund.

### *Types of Reserve Studies*

Reserve studies can be grouped into four types, each of which reflects differing levels of service. The Community Associations Institute (CAI) identifies the following four levels of service.

1. **Full Study**: A full reserve study is the most comprehensive level of service. A full study involves performing: (i) a ***component inventory***, (ii) a ***condition assessment*** (based upon on-site visual observations), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
2. **Update, With-Site-Visit/On-site Review**: A reserve study update which involves performing (i) a component inventory (verification only, not quantification), (ii) condition assessment (based upon on-site visual observation), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
3. **Update, No-Site-Visit/Off Site Review**: A reserve study update with no on-site visual observations in which involves performing (i) life and valuation estimates of components; then determining (ii) the reserve fund status, and (iii) a funding plan.
4. **Preliminary, Community Not Yet Constructed**: A reserve study prepared before construction that is generally used for budget estimates. It is based on design documents such as the architectural and engineering plans, and involves performing (i) a component inventory, (ii) life and valuation estimates of components; then determining (iii) a funding plan.

## *Contents of a Reserve Study*

A reserve study should consist of the following:

- A summary of the community, including the number of units, physical description, and the financial condition of the reserve fund;
- A projection of the reserve starting balance, recommended reserve contributions, projected reserve expenses, and the projected ending reserve fund balance for typically a 30-year period; but at least a minimum of 20 years;
- A tabular listing of the component inventory, component quantity or identifying descriptions, useful life, remaining useful life, and current replacement cost;
- A description of the methods and objectives utilized in computing the fund status in the development of the funding plan;
- Source(s) utilized to obtain component repair or replacement cost estimates; and
- A description of the level of service by which the reserve study was prepared and the fiscal year for the reserve study was prepared.

## *Governing Board Action Steps to Providing for Adequate Reserves*

In order to provide for reserves adequately, an association should employ a systematic approach involving specific action steps. First, the association's governing board should **resolve to have a reserve study** by passing a resolution that a reserve study be performed and commit the association to taking action to ensure the study is conducted.

Communities that have been operating without a reserve study are not in compliance with Virginia law and must undertake to schedule and implement a reserve study. The statutes require the governing board of an association to conduct a reserve study at least once every five years, and review the results of the study annually in conjunction with budget development.

Second, the governing board should **identify the reserve study products needed**. A governing board may contract for the preparation of the physical analysis, financial analysis, and **operating budget** by professionals, or may elect to produce one or more of these items on its own. The governing board may also choose to perform part of the work, and have a professional perform the rest.

Third, the governing board should **establish a work plan**, specifying the nature of the tasks to be performed, before conducting the study. The work plan should establish (i) the types

of components to be included or excluded; (ii) the timeframe for funding common area or common elements components; and (iii) budget for conducting the study.

**Identifying components to include.** Components that the association is obligated to maintain, repair, or restore should not be excluded from the reserve study, even if the components are not part of the common area or common elements. Components for which individual lot or unit owners are responsible should be excluded from the study. The community's governing documents establish those components that are the responsibility of the association to maintain, and those for which owners are individually responsible. Governing documents may contain a *maintenance responsibilities chart* which can be useful for this purpose. In addition, local governments may have information or documents on file (e.g. subdivision documents, easements) regarding the community which can help identify components, including components for which the local government, and not the association, are responsible. (See Appendix C for a list of components that are typically addressed in reserve studies.)

**Timeframe.** There is not universal agreement of the appropriate timeframe for a reserve study. A good approach is to forecast for a time period that will include the replacement year of the component with the longest estimated useful life. Professionals recommend that the study include all components that will fail before the building itself. "Life-of-the-building" components such as the building foundation and structure are generally excluded from the reserve study budget. However, if there is reason to expect an item will wear out before the building does, or the item may wear out within the time span of the reserve study, then the item should be included as an item in the study.

Careful consideration should be given to the timing of the initial reserve study. In a community governed by a property owners' association, the initial study should take place after the first time a capital component is put into use. In a community governed by a condominium unit owners' association, the initial study should be completed as soon as practicable prior to the transfer of declarant control, and may be in conjunction with the association's preparation of the structural warranty statement.

**Budget Available for the Study.** Another consideration is funds available to conduct the study. In order to comply with reserve study requirements, associations should, on an annual basis, include in the annual budget funds adequate to enable either a study, or engagement of outside professionals to complete the study, once every five years.

Next, the governing board needs to **identify the components** that must be included in the reserve study. The governing board should identify documents, including the community's



governing documents (i.e. declaration, bylaws), the most accurate drawings of the development, and the maintenance history of major common area and common elements components. If “as built” plans exist, these would be the best source of information about the nature of the major components. The maintenance history should include the actual dollar cost figures of that maintenance. An association should consider creating a “permanent” maintenance history file for each major component.

The governing board should also take into account that existing components may be outdated and may not meet current code requirements, and that components may need to be replaced with newer products that comply with code requirements.

Finally, once the study has been completed, the governing board needs to **accept, disclose, and implement the results** of the study. The governing board reviews and accepts the results of the reserve study, and incorporates this information into the association budget plan. State law specifies that to the extent a reserve study indicates a need to budget reserves, the association budget shall include, without limitation:

- (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
- (ii) the current amount, as of the beginning of the fiscal year for which the budget is prepared, 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 fiscal year;
- (iii) a statement describing the procedures used for estimation and accumulation of cash reserves; and
- (iv) a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Association governing boards are also required by state law to review the results of the reserve study at least once annually to determine if reserves are sufficient, and make any adjustments they deem necessary to maintain reserves.

### **Conducting a Physical Analysis**

The goals of a *physical analysis* are to (i) estimate useful and remaining life of major components; and (ii) estimate current replacement cost of major components. The analysis lists

and estimates replacement costs and timing for replacement of components whose repair or replacement is funded through association reserves. The study determines when such repairs or replacements will be needed and what repair and replacement will cost. The major steps in conducting a physical analysis are:

1. Identify components.
2. Specify quantities.
3. Inspect components; define scope and methodology for inspection.
4. Determine useful life; document maintenance assumptions.
5. Assess remaining life; determine replacement year.
6. Determine cost of replacement.

There are a number of professional firms that perform reserve studies for CICs in Virginia. This explanation of how to perform a physical analysis will help associations to contract for this service and interpret the study results. For associations that cannot, or do not wish to, hire a professional reserve study preparer, this explanation will provide guidelines for governing board members who decide to perform their own physical analysis. As with other decisions it makes in the conduct of managing association business, governing boards must carefully consider the pros and cons of choosing to undertake their own study, and should consider seeking legal advice before proceeding.

### *Identify Components*

For each community, the list of major components is unique. Lists from other communities or industry publications may serve as a general guide, but are rarely usable without modification and addition. An inaccurate or incomplete list of components can materially distort an association's long-term funding plan. Professionals recommend that items be placed on the list of components for the reserve budget if these components meet all of the following criteria:

- The item is the responsibility of the association to maintain or replace, rather than the responsibility of individual homeowners;
- The item costs over a certain amount to replace (amount to be determined by the governing board)<sup>2</sup>; and
- The estimated remaining useful life of the item is greater than one year; and the estimated remaining useful life of the item is less than 30 years at the time of the study.

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<sup>2</sup> One possible guideline is to include items that cost 1% or more of the total association budget. Another possible guideline is to include items that cost over \$500 or \$1,000 to replace, including groups of related items (e.g. gates in the development) that cost over \$1,000 to replace. The dollar amount or percentage to use as a guideline should be discussed and adopted by the governing board.

There is often no one document with a comprehensive list of components for a development. Therefore, it is not easy to identify components accurately, although it is nonetheless essential that the association develop an accurate list of all items for which repair or replacement must be budgeted.

The list of components to include depends upon the physical characteristics of the development, as well as upon the legal allocation of responsibility among owners, the association, and local government. Appendix C provides a list of items that might be listed as components for association reserves. However, this list is not exhaustive of all possible items.

A community's governing documents can help provide a list of components. Governing documents, including the declaration for the community, typically provide a general description of the common areas or common elements of the development. In a condominium, the governing documents, called condominium instruments, describe that which is part of each unit and what is outside of the unit. Governing documents usually specify the allocation of responsibilities between the association and individual owners, and can serve as a guide to the components to be included in a reserve study.

The developer's reserve budget should list components the builder identified while planning the project. Such items as streets, roofs, exterior paint, and recreation areas are usually included in the developer's original reserve budget. However, governing documents and the developer's budget may not always account for all components for which the association is responsible. A site analysis by knowledgeable individuals should produce a comprehensive list of items for which the association is, or might be responsible.

Local governments and utility companies can often help to identify capital components by stating where their responsibility for certain components ends, and that of the association begins. For instance, the governing documents or developer budget may be unclear about whether sidewalks along the edge of a development belong to or are the responsibility of the community or the locality. If the sidewalks are an association responsibility, then sidewalks are components which should be included in the reserve budget; if not, then the budget need not account for repair and replacement.

### *Quantifying Components*

Although existing maps and construction drawings of a development may serve as a guide to component quantities, a detailed site and building analysis is the best way to obtain an accurate count of these items. For some components, such streets, roofs, and fences, the square or linear footage must be measured in order to describe the quantity; while for other items, such as utility room doors, it may be sufficient to know the number required. The approved plans and

specifications on file with the locality, and the *as-built plans*, if different from those filed with the local government, can be an excellent source of information for these quantities.<sup>3</sup>

For components that are actually made up of a number of items, the nature and quantity of the constituent parts should be stated (e.g., the metal flashing for a shake roof as well as the square footage of shingles). It is common to overlook the “extra” pieces that are in fact necessary to the construction of essential items such as roofs, siding, and irrigation systems.

Once the number and constituent parts of each component are detailed, it is necessary to give some consideration to the quality and specifications of those parts. For instance, is the asphalt two inches thick, or four inches thick? Is the roof a two-ply roof? What grade of paint was used? An accurate description of the materials is essential to proper reserves. If significant in dollar amount, quantities of the same type of component existing in very different conditions should be noted separately (e.g., the square footage of siding with western or southern exposure as compared to the square footage with eastern or northern exposure).

#### *Determining Useful Life and Remaining Life of Components*

*Useful life (UL)* is typically defined as the number of years the component is expected to serve its intended purpose if given regular and proper maintenance. If the association fails to provide proper maintenance, then it may become difficult to anticipate the useful life of components.

One estimate of useful life is material manufacturer’s warranty. This estimate presumes, usually in writing in the fine print of the warranty, that the product was installed with the purported quality of materials and according to the manufacturer’s specifications. Sometimes components may have been installed with lesser quality materials or inferior workmanship, thereby making the effective useful life shorter. When no knowledgeable inspection is made of the materials and installation, the manufacturer’s warranty may not be an accurate description of the useful life of the component.

There are also commercially available manuals that have estimates of useful life. Published data may not be consistent with the location, exposure, or type of a particular component. The estimated life of a street as predicted from national data may well be lower than that of a street in a comparatively mild climate, but the estimated life of exterior paint as predicted from national averages may be higher than that of paint on buildings in windy or coastal areas. In using published estimates, it is necessary to consider how the specific case in question may differ from the average case considered by the manual’s author. Useful life estimates may vary considerably from manual to manual, so consulting more than one manual

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<sup>3</sup> The drawings filed when the development was begun represent builder plans, but may not reflect the development as actually constructed. Therefore, they can be useful, but should be verified by physical inspection.

may guard against the risk of underestimating or overestimating the life of a component. The source(s) of component useful life estimates should be identified specifically.

**Remaining useful life (RUL)** is generally defined as the expected number of years the component will continue to serve its intended purpose prior to repair or replacement. If the development is new and the developer-prepared estimates are correct, the remaining useful life might be estimated simply by subtracting the age of the development from the useful life of each component. The older the components, the less accurate this method will be.

Some of the factors that affect the remaining useful life of a component are (i) current age, (ii) apparent physical condition, and (iii) past maintenance record (or absence of maintenance). The current age of the component may be determined from association records. The apparent current condition must be determined through physical inspection, preferably by someone familiar with the component. Records of past maintenance must be compared with recommended maintenance in order to determine whether the item has been properly maintained or may wear out sooner than expected due to inadequate care.

In determining the remaining useful life of a component, a certain level of continued preventative maintenance may be assumed. These maintenance assumptions should be explicitly stated so that proper maintenance can be continued through the component’s remaining life.

The remaining life of a component implicitly specifies the year in which it may be repaired or replaced. The **effective age** of a component is the difference between the component’s useful life (UL) and remaining useful life (RUL). A budget timeline can be used to show the replacement year for each component. This timeline can serve as a schedule for expected replacement of components and can be updated or changed when the physical analysis is updated, or as components last for shorter or longer periods than expected.

### Sample Replacement Schedule

Component	Age in Years as of 12/31/2018 (Effective Age)	Estimated Useful Life (UL)	Estimated Remaining Useful Life (RUL)	Year to Replace
Stormwater management facility	3	5	2	2021
Paving (slurry coat)	4	7	3	2022
Roofing (wood shingle)	11	15	4	2023

### *Determining Replacement Cost*

**Replacement costs** can be obtained from manufacturers or their representatives for some items, and from local licensed contractors on others. It is important to remember that the cost of component replacement should also include the cost of removing the existing component, along with the cost of obtaining permits and compliance with local building requirements, if applicable. It is also important to take into consideration that some existing components may be outdated and may not meet current code requirements. These components may need to be replaced with newer products that comply with code requirements, which may factor into replacement cost.

There are a number of recognized cost estimating manuals available with pricing information that can be used. Cost estimates are generally comparable among manuals for the same geographic area, so there is less need to consult multiple manuals for replacement costs than for estimates for useful life. However, there are some considerations to factor in when using these manuals to determine costs. The majority of professionals performing reserve studies for associations obtain cost estimates from a database based on the experience of these professionals. Cost estimates derived from this data may vary significantly from estimates based on manuals alone. Accordingly, associations performing their own study may want to obtain additional supporting data for their manual cost estimates from other sources, such as contractors, material suppliers, etc. This collection of data should then be considered in conjunction with the results of an inspection by a reasonably qualified person when making a final determination of replacement cost.

It is important to determine the specific geographic area for which the manual offers a cost average. If a manual has national averages, it may underestimate the cost of labor in certain areas, such urban areas. It is also important to determine the base year in which the manual's cost estimates were made. The current replacement cost for components is not shown in the manual, and should be adjusted for ***inflation*** since the time cost data was obtained.

### *Documenting Maintenance Assumptions*

An important adjunct to determining UL and RUL of a component is to document the type and schedule of maintenance that is assumed for the component to survive that life. For example, if the 20-year life expectancy of a roof is based upon annual cleaning of the roof and gutters, the association will be able to take action to help ensure that all the roofs will indeed last. Documentation of maintenance assumptions can lead to improved maintenance throughout the project and thereby lower replacement costs. On the other hand, ignoring maintenance assumptions, or improper maintenance, can put the replacement schedule and costs in jeopardy.

A properly prepared physical analysis will lead to a better maintenance program for the association. Clear and concise maintenance suggestions are a useful supplement to a

professionally prepared physical analysis. These suggestions may save more than the cost of the original study on future repairs and replacements.

### *Using Component Data to Develop the Funding Analysis*

Once charts of replacement schedule and future replacement costs are completed, the physical analysis is finished. The next step is to determine how much will be spent in each year for all components, and that step is part of the financial analysis.

### **Conducting a Financial Analysis**

The goals of a *financial analysis* are to (i) establish *funding goals*; (ii) identify annual funding requirements; and (iii) disclose limitations and assumptions. Once the estimated useful life, estimated remaining life, and estimated current replacement costs of components are identified, the association is ready to develop a plan for funding the *reserve account*.

In preparing the *funding plan*, the association will have to make decisions about the amount of current assessments and the need for *special assessments*, balanced against projected liability. The financial viability of the association will depend a great deal upon the ability of the association to replace components as they wear out, and not to defer major maintenance items.

A product of the financial analysis process is the development of a funding plan (*cash flow* forecast or projection) to estimate future reserve cash receipts and disbursements. This is most easily presented in a spread sheet format. All supporting assumptions and methodology should be carefully documented.

The major steps in conducting a financial analysis are:

1. Obtain component information (from physical analysis).
2. Determine funding goal.
3. Calculate replacement fund liability.
4. Identify reserve account asset (cash balance).
5. Estimate annual association reserve fund income (from regular assessments).
6. Project expenditures and reserve fund needs, including regular and special assessments.
7. Prepare statement of limitations and assumptions.
8. Disclose reserve study information in association budget.

As an association completes these steps, the governing board will make major policy decisions. Professionals may be able to advise the governing board on key decisions, but it is important for the governing board to understand each of these decisions, since they independently affect the overall results of the funding plan. Because the amount of regular assessments and the need for

special assessments should be indicated in the plan, these decisions will affect monthly costs and property values.

### *Determine Funding Goal*

Determination of the funding strategy, including establishment of the funding goal, is one of the most important fiscal decisions to be made by the governing board. The association budget should clearly indicate estimated revenues and expenses, describe the funding goal, and indicate current status in meeting the goal.

The funding plan should show the funds required to replace each component as it comes to the end of its useful life, and indicate how the association will fund the replacements. The association should decide how much should be raised through regular assessments for the reserve account each year, and how much should be raised by special assessment, if any. In addition, the association should consider how much cash will remain in the reserve account at the end of the planning period relative to the projected balance needed at that date.

Associations will have to make difficult policy choices in determining the funding goal. Many associations underfund reserves. This is due to lack of attention to reserve budgets in the past, and underestimation of replacement costs. An ideal goal for an association is to eliminate any *deficit* or shortage in reserve fund by building up the reserve fund to where the cash in the replacement reserve account is at least equal to the estimated value of accumulated wear of all major components. However, this goal may not be within reach of many associations in the short term, except through special assessments.

### Funding Models

There are at least four basic funding models. All of these funding models have appropriate application. Furthermore, if done correctly, all of these models adequately fund the reserves.

- **Full Funding Model** – (Also called the Component Method.) This is the most conservative funding model. It funds each component as its own line item budget. This method is required in some states; however, Virginia does not require this method. The goal of this model is to attain and maintain the reserves at or near 100%. For example, if a community has a component with a 10-year life and a \$10,000 replacement cost, it should have \$3,000 set aside for its replacement after three years. In this case, \$3,000 equals full funding. Note that this model may not account for inflation.
- **Baseline Funding Model** – (Also called a Minimum Funded Model.) The goal of this model is to keep the reserve cash balance above zero. This means that at any time during the funding period the *reserve balance* does not drop below zero dollars.



This is the least conservative model. An association using this model must understand that even a minor reduction in a component's remaining useful life can result in a deficit in the reserve cash balance. Associations can implement this model more safely by conducting annual reserve updates that include field observations.

- **Threshold Funding Model** – (Also called the Cash Flow Method.) This model is based on the Baseline Funding concept. However, in this model the minimum cash reserve balance is established at some predetermined dollar amount. Associations should take into consideration that depending on the mix of common area or common elements major components this model may be more or less conservative than the fully funded model.
- **Statutory Funding Model** – This model is based on local statutes. To use it, associations set aside a specific minimum amount of reserves as required by statutes. At this time, Virginia statutes are silent on which funding model an association may choose.

Each of the funding models depends on an analysis of cash flows into and out of the reserve fund over the next 30 years. Assessment calculations are then made sufficient to reach the governing board's funding goals.

An association may wish to include information in a reserve study report about full funding to provide in effect a funding measuring stick for the association.

#### *Calculate the Reserve Deficit*

The association should employ the **accrual method** to estimate fund contributions and expenses. This will ensure payments to the reserve account remain level, and that sufficient funds will be available when expenses come due. With respect to revenues, this estimate includes regular and special assessments, as well as the after-tax **interest** income earned on accumulated cash reserves. Expenses can be accrued by spreading the eventual replacement cost of each component over its total useful life or obtaining an estimate of annual component wear. For instance, if a component currently valued at \$10,000 has a useful life of ten years, then one can estimate the annual wear, or the annual provision for the replacement fund, at \$1,000. By year five, this component would then have accrued a liability of \$5,000, assuming no inflation. (If the association fully funded its reserves, then this \$5,000 would already be in the reserve account by the end of the fifth year.)

After estimated revenues and expenses are established, this information can be used to calculate the required estimated reserves for components, and calculate any deficit or shortage in the reserve fund.

Begin by determining the *accrued fund balance* for each component. This can be calculated according to the following formula: Replacement Cost divided by Useful Life (UL) times Effective Age. For example, consider a roofing component with a replacement cost of \$30,000, a useful life of 15 years, and an effective age of 11 years:

$$\frac{\text{Replacement Cost}}{\text{Useful Life (UL)}} \times \text{Effective Age}$$



$$\frac{\$30,000}{15} \times 11 = \$2,000 \times 11 = \$22,000$$

Analyze each component in this manner, and then total together the accrued fund balance for components to determine the projected reserve fund balance. Then determine the reserve deficit by calculating the difference between the projected reserve fund balance and the estimated cash balance in the reserve fund. Once the reserve deficit (if any) is established, this information can be used to determine the amount of reserve deficit per lot or unit. In addition, the reserve balance funding percentage can be determined.

Component Replacement	Replacement Cost	Useful Life (UL) (years)	Effective Age (years)	Desired Fund Balance
Stormwater management facility	\$10,000	5	3	\$6,000
Paving	\$14,000	7	4	\$8,000
Roofing	\$30,000	15	11	\$22,000
Total Reserve Balance (current)				\$36,000
Estimated Cash Reserves (current)				\$22,000
Reserve Deficit (current)				\$14,000
Reserve Deficit per unit (\$14,000 ÷ 35 units)				\$400
Percentage of Funding				61%

$$\text{Desired Fund Balance} = \text{Replacement Cost} / \text{Useful Life (UL)} \times \text{Effective Age}$$

$$\text{Reserve Deficit} = \text{Total Reserve Balance} - \text{Estimated Cash Reserves}$$

$$\text{Percentage Funding} = \text{Estimated Cash Reserves} / \text{Reserve Deficit} \times 100$$

Although this approach is relatively simple, there are challenges posed by the fact that it does not factor the effects of interest or of inflation. Interest rates and inflation play a significant role in whether a reserve fund can meet its goals. An alternative reserve deficit model, which does take into account interest and inflation, is as follows<sup>4</sup>:

$$\text{Desired Balance} = \left( \frac{\text{Replacement Cost}}{\text{Useful Life (UL)}} \times \text{Effective Age} \right) + \left( \frac{\text{Replacement Cost}}{\text{Useful Life (UL)}} \times \text{Effective Age} \right) \left( \frac{1}{(1 + \text{Interest Rate})^{\text{Remaining Life (RUL)}}} \right) - \left( \frac{\text{Replacement Cost}}{\text{Useful Life (UL)}} \times \text{Effective Age} \right) \left( \frac{1}{(1 + \text{Inflation Rate})^{\text{Remaining Life (RUL)}}} \right)$$

Assuming an inflation rate of 3% and interest rate of 5% after taxes, the following are calculated.

Component Replacement	Replacement Cost	Useful Life (UL) (years)	Effective Age (years)	Desired Fund Balance
Stormwater management facility	\$10,000	5	3	\$5,787
Paving	\$14,000	7	4	\$7,590
Roofing	\$30,000	15	11	\$22,553
Total Reserve Balance (current)				\$33,930
Estimated Cash Reserves (current)				\$22,000
Reserve Deficit (current)				\$11,930
Reserve Deficit per unit (\$11,930 ÷ 35 units)				\$340
Percentage of Funding				65%

This approach, though more complicated, may be more reflective of the true amount of the reserve deficit (assuming the interest and inflation rates are accurate). In most cases, the difference between these approaches is not material; however, with some mixes of common area or common elements major components the difference can be quite noticeable and failure to properly take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit.

Many associations take the approach of an *unfunded & special assessment model*. The association does not have reserve balances that will cover expected replacement costs, and the only recourse is to schedule special assessments to cover component replacement costs when they are due. Lack of information about needed special assessments can pose a problem for owners. One-time costs impose an additional financial burden on owners, and can be a considerable hardship on those with limited or fixed incomes who may be unable to pay. This

<sup>4</sup> See Appendix H for more detail on calculating using this formula.

approach is the riskiest, and could jeopardize the financial viability of the association if assessments cannot be raised when needed.

Another approach is a *mixed model* in which the cash needs for replacement of components are met through a combination of regular and planned special assessments. The degree to which an association can meet its cash needs through regular as opposed to special assessments may be an indicator of the association's financial viability.

When considering an alternative source of funding, such as a special assessment, the governing board should refer to the community's governing documents and applicable law to ensure the association has the authority to impose assessments to cover component replacement costs that may come due.

The association's choice of the funding goal or strategy will have a direct effect on the cash required of each individual owner. The strategy, and the degree to which the association has funded its reserves, should affect property value as well. (If an association shows a \$5,000 unfunded reserve deficit per unit, this amount reasonably should be reflected in the sales price.)

#### *Estimate Association Reserve Fund Income*

Ideally, the replacement reserve account should be built through regular (usually monthly) assessments paid by association members. A specific dollar amount of regular association payments should be earmarked for reserves, and deposited into a reserve account as they are collected. Financing of replacement reserves from regular assessments is desirable. First, it spreads the responsibility for replacements over time, rather than allocating costs to owners who happen to be in the association in the year a particular component comes due for repair or replacement. This funding approach provides a more equitable distribution of the costs of aging components. Second, it provides individual owners with more certainty as to the true costs of the property.

Income from regular assessments should be calculated for each year, based on the number of lots or units, and the level assessment per lot/unit. In communities with several rates for different types or sizes of units, the expected income should be calculated for each class of unit and then added. Assessment increases, if any, should be estimated by year. A method for calculating the amount to contribute to the reserve account follows. Under normal economic circumstances this approach should yield a good approximation. However, associations may wish to obtain the assistance of a professional firm to fine tune estimates to take into account inflation and interest rates.

Component	Replacement Cost	Estimated Useful Life (UL) (years)	Annual Contribution
Stormwater management facility	\$10,000	5	\$2,000
Paving	\$14,000	7	\$2,000
Roofing	\$30,000	15	\$2,000
Total Annual Contribution			\$6,000
Add 10% for Contingencies			\$600
Total Annual Contribution			\$6,600
Number of Units in Community			48
Annual Contribution per Unit			\$138
Monthly Contribution per Unit			\$11.46

State law requires an association’s governing board to review reserve study results at least annually to determine if reserves are sufficient – according to the governing board, and to make adjustments necessary to maintain reserves. Changes in interest rates or inflation rates, or unusual changes in the prices of components, may make it advisable to raise or lower the monthly amount assessed to fund reserves. These periodic “course corrections” can promote the stability of the reserve account, and decrease the likelihood of financial shocks when the next reserve study is performed.

*Project Expenditures and Reserve Funding Needs*

The physical analysis provides the estimates for expected expenditures by year for each component. Adding these component requirements together, by year, gives the estimate of needed funds over time. Association members should be aware of the limitations of expenditure forecasting and of the reality that the overall funding plan is only as good as the initial estimates of replacement costs and the time of replacement needs.

An important policy issue for a governing board is the decision over whether to use replacement costs, or estimated future costs. Use of an inflation rate will generally result in higher estimates of future costs. If the governing board uses replacement costs, it is essential the board revise the plan annually based upon updated current replacement costs, plus currently required or anticipated expenditures. The annual cost for each component would be calculated by dividing the unfunded replacement cost by the remaining useful life. This approach is valid only if repeated each year.

If the board chooses to use an inflation rate, it would apply an average long-term cost inflation rate to all components from the time of the study until the year of replacement (based on recent average component cost data). To keep this plan current, it is important to annually review and update projected expenditures, inflation factors and other assumptions. As with the replacement cost approach, the inflation rate approach is valid only if repeated each year.

There are several ways to select an inflation rate for estimating component costs for future years. These include: (i) Federal Bureau of Labor Statistics; (ii) published information from construction cost estimating companies; and (iii) Marshall & Swift. The interest rate assumption is an important decision for the governing board, and should be explicitly disclosed in the financial analysis. Because of their effect on estimating future costs, replacement cost information and inflation rate assumptions should be reviewed annually, and the projections adjusted as necessary.

Following is a sample chart showing calculations for future replacement costs. In a real situation, it may be necessary to add additional years of inflation in order to account for old pricing information. The sample chart assumes the pricing information on all components is up-to-date.

Component	Quantity & Units	Unit Cost	Replacement Cost (2019)	Year to Replace	Future Cost to Replace
Painting, exterior stucco	15,875 sq. ft.	.63	\$10,000	2021	\$10,941
Paving, slurry coat	35,000 sq. ft.	.40	\$14,000	2022	\$16,022
Roofing, wood shingle	10,715 sq. ft.	2.80	\$30,000	2023	\$35,913
(Future replacement cost was calculated with an annual 4.6% inflation rate.)					

#### *Estimate Interest Earnings of Reserve Account Over Financial Analysis Period*

Reserve funds deposited in certificates of deposit or money market accounts will generate interest income to increase the reserves. For forecasting purposes, it is necessary to choose an interest rate. For planning purposes, a lower interest rate is more conservative than a higher one. Interest rates can be pegged to current bank rates or CD rates. Income from the reserve and operating accounts is taxable to an association, even if the association is established as a non-profit organization. A governing board should adjust the interest rate assumption to account for applicable federal and state taxes.

Though it may be difficult to accurately project future component cost increases or future interest earned on reserve cash balances, it is nonetheless important to use these factors for calculations in the financial analysis, and to update them each year. This is particularly true for associations that have chosen to rely in part on special assessments.

As component replacement comes due in future years, it will draw against reserve funds. The initial reserve account, augmented by regular contributions from routine homeowner assessment payments, should provide sufficient funding to pay for replacements as they are needed. In some cases, though, the reserve account will not be enough. The cash flow analysis will identify instances where expenditure projections for a given year exceed projected reserve cash balances. In these cases, additional funds from special assessments (or other sources, if any) would be needed to increase the reserve accounts to desired levels.

Some replacement expenses will be impossible to estimate. This may be due to unexpected breakage or destruction, failure in a “life-of-the-project” system, reduced useful life of a component, or other unexpected component cost. A line item in the cost estimates might be established as a contingency. This amount might be limited to 3% to 5% of the first-year budget in a new community. In a conversion, or established communities with incomplete documentation, larger contingency levels may be necessary. One useful way to establish estimates for contingency funding in established communities is to review prior year spending for contingency-type replacements or continuing repairs. For instance, if there is routine work done annually on underground utilities, then some funds for expected annual levels might be budgeted under the contingency category.

Appendix F contains a sample financial analysis which summarizes these income and cost concepts. The rows of the spreadsheet show individual component costs and association income sources. The columns show the years included in the financial analysis. The sample assumes a funding plan period of 30 years and mixed funding model which uses regular and special assessments to maintain a positive cash balance. Because the model is not fully funded, inflation factors are employed in determining component costs.

#### *Statement of Limitations and Assumptions*

The funding analysis should document (i) all limitations to the estimate, (ii) assumptions made in order to conduct the estimates, (iii) the model used to make the estimates.

#### *Disclose Reserve Study Information in the Annual Budget; Updating*

An association, once it has successfully completed a reserve study (both physical and financial analysis), can use the resulting information in its annual budget. Indeed, state law requires that to the extent a reserve study indicates the need for an association to budget reserves, the budget must include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
2. 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 (as of the beginning of the fiscal year for which the budget is prepared);

3. A statement describing the procedures used for estimation and accumulation of cash reserves; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

An association governing board is required to review the results of the reserve study at least annually to determine if reserves are sufficient, and make appropriate adjustments to ensure reserves are maintained. How often, though, does the reserve study need to be updated?

Annual updates of the financial analysis can be carried out at the same time as preparation of the operating budget, and can call for required adjustments within the original planning period. The assumptions in the reserve study (e.g. remaining life and cost of components) should be reviewed and updated as necessary. The frequency of updates of component data will depend on the soundness of the original data and estimates, the preparer's recommendations, and the association's ability to adequately maintain its components. Even though the methodology calls for a financial study covering a time frame of twenty years or more, annual planning and periodic reviews of the reserve study can rely on updated estimates.

### **Hiring a Professional to Perform a Reserve Study**

Members of an association governing board must decide whether to conduct a reserve study by themselves, or hire qualified professionals to perform the task. Some associations elect to hire outside consultants to perform certain tasks, but not others. In making this decision, a governing board should consider several factors, to include:

1. The level of expertise within the board or the community for this kind of study;
2. The willingness of board or community members to volunteer their time;
3. The cost of hiring outside consultants to conduct the reserve study;
4. Whether a previous reserve study is available for use as a guideline;
5. The quality of existing documentation of components and replacement costs;
6. The association's previous history regarding special assessments;
7. The current financial state of the association's reserve account; and
8. The degree to which board members can be held personally liable for a defective reserve study.

If the governing board wishes to have all or part of the study performed by professionals, it must still make several important decisions. These include interviewing and hiring the consultants, assisting them in obtaining community data, reviewing the *work product* delivered by the consultants, and following up on consultants' recommendations for the reserve funding



account. Should a governing board elect to use consultants, the following should be established by the board:

- Identification of common area or common elements components, exclusive use components, quasi-structural components, and life-of-the-project components (with the assistance of association management);
- The interest rate for estimating income earned on reserve balances; and
- The funding goal of the reserve study, including the degree to which reserves are to be funded by annual assessments, and the need for special assessments.

As the governing board is accountable for quality of the study itself, it should carefully specify the work tasks and carefully review potential consultants with respect to previous experience, price, and recommendations from other communities. Following are some or all of the work tasks that may be performed by professionals.

#### Physical Analysis Products for Consultants

- Quantification of components;
- Documentation of maintenance assumptions and recommendations;
- Identification of useful life and remaining life of components, and replacement year; and
- Estimation of replacement cost in current and future dollars.

#### Financial Analysis Products for Consultants

- Spreadsheet modeling of reserve funding, and development of solution(s) meeting the funding goals of the association;
- Calculation of cash balance of reserve account by year;
- Estimation and explanation of reserve deficit;
- Recommendation of needed increases in reserve portion of assessment;
- Preparation of statement of limitations and assumptions of reserve analysis; and
- Preparation of reserve study information for association budget.

After determining the work tasks, the board must select the consultants or contractors, if any, who will perform all or part of the work. Possible outcomes of this decision-making process include:

- Hiring an independent engineering, appraisal, or construction cost-estimating firm to perform the physical analysis, and hiring an independent accountant experienced with community associations to produce the financial analysis and association budget;
- Hiring an organization with staff expertise to perform an integrated component and financial analysis;

The type of assistance that will be needed depends upon the nature of the product desired, the budget, and expertise available to the governing board. The governing board is ultimately responsible for the reserves study disclosures. The board should also consider its potential legal liability if the study does not meet statutory information requirements.

Recommendations from other community associations can often be helpful in determining which company or companies to hire for the reserve study. Organizations of CICs and related professionals can also be a resource to find qualified professionals. It is helpful to talk with people who have worked with any firm or consultant under consideration and to examine samples of related work.

The governing board should interview several companies and obtain samples of their work in order to get a sense of each company's qualifications, experience, and pricing structures. Appendix E contains partial lists of questions a governing board may use to ask a reserve study preparer as part of the interview process. The questions may be used in interviews with potential consultants, or used a written *request for proposal*, along with a clear specification of the work tasks to be performed. Answers to these questions, as well as price, should help in the selection of any needed professionals.

#### *Information the Governing Board Should Provide*

Before it can provide a cost estimate, a consulting firm will need information from the governing board regarding the community and the scope of work. The governing board should provide potential consultants with the following:

- The size of the community – area and number of lots/units;
- Types of improvements in the common area/common elements – pools, clubhouses, etc.;
- Which portions of the reserve study the consulting firm is being asked to perform;
- A list and definition of major components;
- A statement of board policy about major components for which it is not requesting an estimate of replacement costs;
- Maintenance records, warranties, and other information regarding the condition of components;
- Information on planned changes or additions to major components;
- Copy of as-built construction drawings, if they exist;
- A copy of the previous reserve study, if one was conducted;
- Estimated replacement cash balance at beginning of next (nearest) fiscal year;
- A copy of the current or proposed association budget;
- A board estimate of long-term interest rate to be earned on reserve account cash balance; and
- Anticipated reserve expenses for the remaining year.

In some cases, a consulting firm might need further information to make its estimate. It will save time to ascertain a company's information requirements before the actual interview takes place.

### **Potential Problems**

Many associations, especially if conducting a reserve study for the first time, may find they are lacking certain information that is necessary to complete the study. If so, they will need to retrieve and document this information either before the study is begun, or during the study itself. Here is a list of the more common problems that can be addressed during the course of doing a reserve study:

- The association does not have an established master list of major components;
- If a master list of components exists, it does not include all significant common area/common elements components listed in the governing documents or developer's drawings;
- Information on remaining life and current replacement cost has not been prepared for all major components;
- The association does not have a documented maintenance schedule and related assumptions for each major component;
- "Life-of-the-project" components are not mentioned in assumptions, or included in reserve budgeting;
- The association budget does not contain reserve study information or assumptions;
- There is no policy to distinguish reserve expenditures from operating expenses;
- No reserve funding goal has been established;
- There is no separate bank account(s) for reserve funds;
- No previous physical analysis or financial analysis has been conducted;
- The reserve deficit is staying constant or increasing over time;
- Special assessments are required to fund major repairs; and
- Current income from assessments does not equal or exceed dollar value of annual component wear.

## Resources Used in Developing the Guidelines

California Department of Real Estate. (August 2010). *Reserve Study Guidelines for Homeowner Association Budgets*. State of California.

Community Associations Institute. (2018). *Reserve Specialist (RS) Designation: National Reserve Study Standards*. Community Associations Institute. <https://www.caionline.org/pages/default.aspx>.

Foundation for Community Association Research (FCAR). (2014). *Best Practices: Reserve Studies/Management*. Foundation for Community Association Research. Falls Church, Virginia.

Moss, J. R. (2018). *Virginia Common Interest Communities: A Resource for Volunteer Leaders, Members, Managing Agents and Business Partners* (2nd ed.). Jeremy Moss.

Nevada Department of Business and Industry. (2003). *Reserve Study Guidelines*. Prepared by the Lied Institute for Real Estate Studies. UNLV. State of Nevada.

## **Additional Resources**

Community Associations Institute. (1994). *A Guide to Replacement Reserve Funds and Long-Term Reserve Funding*. Community Associations Institute. Falls Church, Virginia.

Community Associations Institute. (2013). *Reserve Funds: How and Why Community Associations Invest Assets*. 2<sup>nd</sup> Edition. CAI Press. Falls Church, Virginia.

## Appendix A – Excerpts from Code of Virginia

Effective Until September 30, 2019	
§ 55-79.41	Condominium Act – Definitions
§ 55-79.93:1	Condominium Act - Annual budget; reserves for capital components
§ 55-426	Virginia Real Estate Cooperative Act – Definitions
§ 55-471.1	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components
§ 55-509	Property Owners’ Association Act – Definitions
§ 55-514.1	Property Owners’ Association Act - Annual budget; reserves for capital components

Effective October 1, 2019	
§ 55.1-1800	Property Owners’ Association Act – Definitions
§ 55.1-1826	Property Owners’ Association Act - Annual budget; reserves for capital components
§ 55.1-1900	Virginia Condominium Act - Definitions
§ 55.1-1965	Virginia Condominium Act - Reserves for capital components
§ 55.1-2100	Virginia Real Estate Cooperative Act – Definitions
§ 55.1-2147	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components

## § 55-79.41. Definitions

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § [54.1-2345](#).

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, *infra*.)

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, *infra*.).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3;(ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending *ab solo usque ad coelum*. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter



of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-525.16.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 410.

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.

## § 55-79.83:1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive organ 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 organ 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 § 55-79.41;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive organ 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, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-79.41;
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 that 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;2019, cc. 33, 44.

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.

## § 55-426. Definitions

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55-458.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55-444.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the

owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55-496 et seq.) of this chapter.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 55-439 paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Master association" means an organization described in § 55-456, whether or not it is also an association described in § 55-458.

"Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person who owns a cooperative interest, other than as security for

an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who by means of a voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55-478 ;(ii) exercise any development right pursuant to § 55-446;(iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55-456;or (vii) appoint or remove any officer of the association, any master association or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277; 2005, c. 436.

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.

## § 55-471.1. (Repealed effective October 1, 2019) 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, the executive board 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 § 55-426;
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 association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-426;
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 that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436;2019, cc. 33, 44.

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.

## § 55-509. Definitions

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

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to 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 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 in connection with the provision of maintenance and/or services 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. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § [55-525.16](#).

1989, c. 679; 1991, c. 667; 1996, c. [618](#); 1998, c. [623](#); 2001, c. [715](#); 2002, c. [459](#); 2003, c. [422](#); 2008, cc. [851](#), [871](#); 2011, c. [334](#); 2015, cc. [93](#), [410](#).

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.

## § 55-514.1. (Repealed effective October 1, 2019) 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 § 55-509;
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, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-509;
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;2019, cc. 33, 44.

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.

## § 55.1-1800. (Effective October 1, 2019) Definitions

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

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Common interest community" means the same as that term is defined in § [54.1-2345](#).

"Common interest community manager" means the same as that term is defined in § [54.1-2345](#).

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to 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 of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services 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. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

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

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § [55.1-1809](#). The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § [59.1-480](#) of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § [55.1-1809](#).

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § [55.1-1000](#).

1989, c. 679, § 55-509; 1991, c. 667; 1996, c. [618](#); 1998, c. [623](#); 2001, c. [715](#); 2002, c. [459](#); 2003, c. [422](#); 2008, cc. [851](#), [871](#); 2011, c. [334](#); 2015, cc. [93](#), [410](#); 2019, c. [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.

## § 55.1-1826. (Effective October 1, 2019) 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 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.

## § 55.1-1900. (Effective October 1, 2019) Definitions

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

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § [54.1-2345](#).

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ [55.1-1917](#) and [55.1-1918](#).

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § [55.1-1000](#).

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § [55.1-1943](#); (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § [55.1-1929](#).

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § [55.1-1925](#).

"Unit owner" means one or more persons that own a condominium unit or, in the case of a



leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

1974, c. 416, § 55-79.41; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 410; 2019, c. 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.

## § 55.1-1965. (Effective October 1, 2019) 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 that 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.

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.

## § 55.1-2100. (Effective October 1, 2019) Definitions

As used in this chapter or in the declaration and bylaws, unless provided otherwise or unless the context requires a different meaning:

"Affiliate of a declarant" means any person that controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this definition are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55.1-2132.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units of such cooperative.

"Common expenses" means any expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55.1-2118.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this chapter, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated

interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert that (i) as part of a common promotional plan, offers to dispose of its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55.1-2173 et seq.).

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision 2 or 4 of § 55.1-2113 for the exclusive use of at least one unit but fewer than all of the units.

"Master association" means an organization described in § 55.1-2130, whether or not it is also an association described in § 55.1-2132.

"Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person that owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that

cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, that, by means of a voluntary transfer, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower boundaries and (ii) spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, that secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55.1-2155;(ii) exercise any development right pursuant to § 55.1-2120;(iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate that may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55.1-2130;or (vii) appoint or remove any officer of the association, any master association, or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion of such estate or interest.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277, § 55-426; 2005, c. 436;2019, c. 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.

## § 55.1-2147. (Effective October 1, 2019) 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, the executive board 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 § 55.1-2100 ;
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 association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-2100;
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 that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436, § 55-471.1; 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.

## APPENDIX B - GLOSSARY

The following definitions are for common terms related to reserve studies.

**Accrual Method:** A means of saving for an upcoming expense at a constant rate, so that all money will be available when needed.

**Accrued Fund Balance (AFB):** The total accrued depreciation. It is an indicator against which the actual or projected reserve balance can be compared to identify the direct proportion of the “used up” life of the current repair or replacement cost. This number is calculated for each component, and the summed together for the association total. The following formula can be used to determine AFB:  $AFB = \text{Current Cost} \times \text{Effective Age/Useful Life}$ .

**As-built Plans:** Drawings produced by the developer that show the actual characteristics of a community at the time when construction was completed.

**Assessment:** Monetary contribution required of each member of common interest community association to meet the association’s expenses. Assessments are typically due once a month.

**Association:** A legal entity that manages a common interest community and enforces its governing documents. These include property owners’ associations, condominium unit owners’ associations, and proprietary lessees’ associations in real estate cooperatives.

**Capital Improvements:** Additions to the association’s common elements that previously did not exist. While these components should be added to the reserve study for future replacement, the cost of construction should not be taken from the reserve fund.

**Cash Flow:** The amount of money deposited into and withdrawn from a reserve account over a certain period of time.

**Cash Flow Method:** A method of developing a reserve funding plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different reserve funding plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

**Common Area or Common Elements:** The portion of a common interest community that is owned jointly by all members of the association. In a property owners’ association this portion is called a common area. In a condominium or real estate cooperative, these are called common elements.

**Component:** The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. These components comprise the common elements of the community and typically are: 1. association responsibility,

2. with limited useful life expectancies, 3. predictable remaining useful life expectancies, and 4. above a minimum threshold cost. It should be noted that in certain jurisdictions there may be statutory requirements for including components or groups of components in the reserve study.

**Component Full Funding:** When the actual or projected cumulative reserve balance for all components is equal to the fully funded balance.

**Component Inventory:** The task of selecting and quantifying reserve components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representatives.

**Component Method:** A method of developing a reserve funding plan where the total contribution is based on the sum of contributions for individual components.

**Condition Assessment:** The task of evaluating the current condition of the component based on observed or reported characteristics.

**Contingency Fund:** The portion of reserves allocated for unanticipated expenses, such as damage to components or unexpected cost increases.

**Current Replacement Cost:** See “replacement cost.”

**Deficit:** An actual or projected reserve balance less than the fully funded balance.

**Developer Drawings:** Drawings produced by the developer before or during construction of the community. Such drawings may or may not match the community’s actual attributes. (Also see “As-built Plans.”)

**Effective Age:** The difference between useful life and remaining useful life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in comparisons.

**Financial Analysis or Funding Analysis:** The portion of a reserve study where the current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (reserve funding plan) are derived, and the projected reserve income and expense over time is presented. The financial analysis is one of the two parts of a reserve study.

**Fund Status:** The status of the reserve fund as compared to an established benchmark such as percent funding.

**Funding Goals:** Independent of methodology utilized, the following represent the basic categories of funding plan goals:



- *Baseline Funding:* Establishing a reserve funding goal of keeping reserve cash balance above zero.
- *Component Funding:* Setting a reserve funding goal of attaining and maintaining cumulative reserves at or near 100% funded.
- *Statutory Funding:* Establishing a reserve funding goal setting aside the specific minimum amount of reserves of component required by local statutes.
- *Threshold Funding:* Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount. Depending on the threshold, this may be more or less conservative than component full funding.

**Funding Plan:** An association's plan to provide income to a reserve fund to offset anticipated expenditures from that fund.

**Funding Principles:**

- *Sufficient Funds When Required*
- *Stable Contribution Rate over the Years*
- *Evenly Distributed Contributions over the Years*
- *Fiscally Responsible*

**Governing Documents:** Legal documents that organize the common interest community, establish contractual relationships between the parties, and establish the rights and responsibilities of individual owners, the association, authorized occupants, and the governing board. Governing documents typically consist of a declaration for the community, including a legal description of the property, plat(s) of the development, plans for development structures, and bylaws for the operation of the association. Governing documents may also include rules and regulations for the community. In a condominium, the governing documents are called *condominium instruments*.

**Inflation:** The rate at which the cost of components are expected to rise over time.

**Interest:** Money earned from reserve funds deposited into an account at a financial institution.

**Inventory:** A list of community-owned components are their attributes, such as age, quality, manufacturer, degree of wear, and useful life.

**Life and Valuation Estimates:** The task of estimating useful life, remaining useful life, and repair or replacement costs for the reserve components.

**Maintenance Responsibilities Chart:** A table or chart often included in association governing documents that details maintenance responsibilities in a common interest community between the association and individual owners.

**Management Company or Common Interest Community Manager:** An outside company hired by an association to perform some of the association's functions. These can include collection of assessments, and maintenance of the common area or common elements.

**On-site Inspection:** Physical inspection of one or more components to help determine their current physical state and remaining useful life.

**Operating Budget:** The portion of an association's budget that is allocated for frequently-occurring or minor expenses.

**Percent Funded:** The ratio, at a particular point of time (typically the beginning of the fiscal year), of the actual (or projected) reserve balance to the accrued fund balance, expressed as a percentage.

**Physical Analysis:** The portion of the reserve study where the component inventory, condition assessment, and life and valuation estimate tasks are performed. This represents one of the two parts of the reserve study.

**Remaining Useful Life (RUL):** The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" remaining useful life. RUL is also referred to as remaining life (RL).

**Replacement Cost:** The cost of replacing, repairing, or restoring a reserve component to its original functional condition. The current replacement cost would be the cost to replace, repair, or restore the component during that particular year.

**Reserve Account:** An account at a bank or other financial institution containing funds intended solely to pay reserve expenses.

**Reserve Balance or Reserve Funds:** Actual or projected funds as of a particular point in time that the association has identified for use to defray the future repair or replacement of those major components which the association is obligated to maintain. Also known as reserves, reserve accounts, cash reserves. Based upon information provided and not audited.

**Reserve Component:** The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. Components typically are the association responsibility, have limited useful life expectancies, have predictable remaining useful life expectancies, are above a minimum threshold cost, and are as required by local codes.

**Reserve Provider:** An individual that prepares reserve studies.

**Reserve Study:** A capital budget planning tool that can be used by an association to determine the physical status and repair/replacement cost of an association's capital components, and an analysis of an association's funding capacity to maintain, repair, and replace capital components.

**Special Assessment:** An assessment levied on the members of an association in addition to regular assessments. Governing documents or local statutes often regulate special assessments.

**Surplus:** An actual or projected reserve balance greater than the fully funded balance.

**Useful Life (UL):** Total useful life or depreciable life is the estimated number of years that a reserve component can be expected to serve its intended function if it is properly constructed in the present application and/or installation.

**Work Product:** The output from a reserve study, such as reports, tables, and charts.

## Appendix C – List of Common Area/Common Elements Components

Note: The following is a list of components typically found in common interest communities. Please be advised this is not an exhaustive list, and does not include every type of component that may be found in a community.

<b>A</b>
Alarm systems, fire and intrusion
Antennas, satellite dish and other
Appliances
Asbestos encapsulation or removal
Awnings and other overhead coverings
<b>B</b>
Balconies (see also decks)
Benches
Boilers
Bulkheads
<b>C</b>
Concrete (walls, patios, sidewalks, curbs, and gutters)
<b>D</b>
Decks, pool and spa
Decks, residential
Display cases
Docks
Doors
Drainage systems
<b>E</b>
Electrical transformers
Electrical wiring and related fixtures in common area
Elevator, cab
Elevator, hydraulic, traction, etc.
Equipment, cleaning and maintenance
Equipment, communication and telephone
Equipment, entertainment, music/video systems
Equipment, exercise, recreational, etc.
Equipment, office
Equipment, pool, pumps, motors and filters
<b>F</b>
Fans, exhaust, garage, and other
Fences, chain link, wood, etc.
Fire escapes
Fire sprinklers and related equipment
Floor covering, carpet, tile, vinyl, etc.
Floor covering, wood replacement and refinishing

Fountains
Furnishings, lobby, clubhouse, etc.
<b>G</b>
Gates, iron, wood, etc.
Garage doors and hardware
Garbage enclosures
Gazebo
Generator
Gutters and downspouts
<b>H</b>
HVAC, air conditioning
HVAC, heating systems
<b>I</b>
Irrigation system, controllers
Irrigation system, piping, valves and sprinkler heads, pumps
<b>K</b>
Kiosks and message/communication centers
<b>L</b>
Lakes, ponds, and waterways
Landscaping, replacement of major trees and plants
Life safety system (exit signs, emergency lights)
Light fixtures, exterior
Light fixtures, interior
<b>M</b>
Mailboxes and centers
Masonry
Monitoring system, carbon monoxide
<b>P</b>
Paint and stain, exterior
Paint and stain, interior common area
Parking garages
Pavers
Paving
Perimeter walls
Planter boxes
Plumbing fixtures, exterior and interior
Plumbing, piping systems
Pool (plaster, mechanical equipment, deck,

furniture)
Posts, deck, lamp, etc.
Pumps, lakes, ponds, waterways, building systems
<b>R</b>
Racquetball courts
Railings
Retaining wall
Roof
<b>S</b>
Seawalls
Security gates, gate operator and motor, entry system
Septic tanks
Sewage ejector equipment
Siding and trim
Skylights
Slopes
Solar heating system, pool and spa
Solar heating system, residential
Spas
Stables and tack rooms
Stairs
Stormwater systems
Streets and drives, parking areas
Stucco, sandblasting and resurfacing
Subsurface utility piping
Sump pump equipment
Swimming pools
<b>T</b>
Tennis courts, resurfacing, lighting, fencing
Trash compactor
Trellises
<b>V</b>
Valves
Vehicles
Ventilation system, garage
<b>W</b>
Walkways, wood, brick, tile, etc.
Water heaters
Waterproof membranes
Windows

# Appendix D – Flowcharts

Steps to Provide for Adequate Reserves
Steps in Physical Analysis
Steps in Financial Analysis

## Steps to Provide for Adequate Reserves

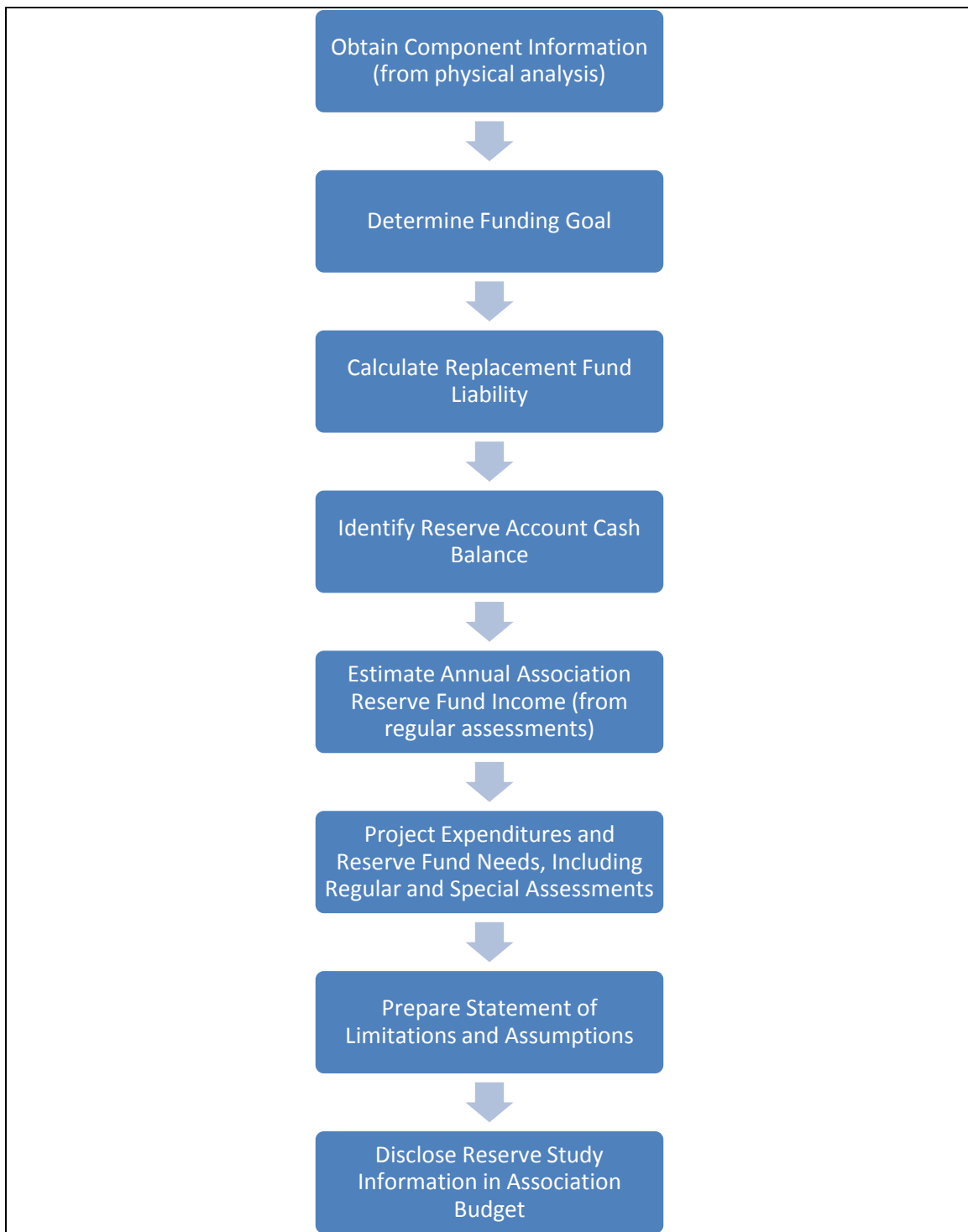


## Steps in the Physical Analysis Process





## Steps in the Financial Analysis Process



## Appendix E – Checklists and Interview Questions

Checklist	Physical Analysis
Checklist	Financial Analysis
Interview Questions	Physical Analysis Preparers
Interview Questions	Financial Analysis Preparers

## Physical Analysis Checklist

### Deciding which components to include:

- Relevant components mentioned in developer budget have been reviewed.
- Components mentioned in the governing documents have been reviewed.
- An on-site inspection for possible additional components has been made.
- The governing board has had a public discussion and has determined a policy stating its position on life-of-the-building, exclusive use, and quasi-structural components.
- The governing board has communicated the component list to the preparer of the physical analysis.

### Specifying quantities of each component:

- As-built drawings have been consulted, if possible.
- An on-site inspection of each component and on-site count of each type of component have been made.
- The quality of each component has been determined and expressed in terms that identify a specific grade of material.

### Determining the useful life (UL) of each component:

- Manufacturer warranties have been consulted whenever possible.
- Environmental factors that might affect useful life have been taken into account.
- Installation and materials have been determined to be consistent with each manufacturer's description; if not, an adjustment has been made to the remaining useful life estimated by the warranty or by the manuals.
- A standard manual has been consulted.
- Maintenance assumptions have been documented.

### Assessing the remaining useful life (RUL) of each component:

- An on-site inspection of each component has been made.
- Past maintenance has been taken into account.
- Individuals with knowledge of the components have participated in the assessment of remaining life.
- The governing board has determined what level of maintenance is expected to achieve the remaining life estimated.

### Determining the cost of replacement:

- A standard costing manual has been consulted or more than one tradesperson asked for a price for each component.
- If a manual is used, the "current" price of each component has been adjusted for the age of the data in the manual.
- If a manual is used, regional variations in price are taken into account.
- Cost of replacement includes cost of removing old component, if necessary.
- Adjustments have been made for grade or quality of materials or levels of maintenance of materials.

## Financial Analysis Checklist

### Funding goal:

- The association's funding goal for reserve replacement is clearly specified.

### Budget information

- The budget contains estimated revenue and expenses on an accrual basis.
- The budget identifies total cash reserves currently set aside.
- The budget shows funds set aside for reserves in a separate account(s).
- The estimated remaining life of all major components is shown.
- The estimated current replacement cost of all major components is shown.
- The budget includes identification of methods of funding for future repair, replacement, or additions.
- The budget includes a statement on methods used to develop estimates and funding plan.

### Association income and expense estimates:

- An appropriate component inflation factor has been used to estimate replacement costs in future years.
- The interest rate applied to association cash reserves is reasonable, and is an after-tax estimate.
- Needed special assessments are clearly identified.
- Assumptions about increases in the portion of regular assessments allocated to reserves are clearly specified.
- Income and expenditures are shown annually for the plan period.

### Association cash balances:

- With reserve assessments, the cash balance (assets-planned reserve expenditures) is greater than zero in every year.
- The reserve deficit is estimated for the current year.
- The model shows a stable or decreasing reserve deficit (in constant dollars) over the plan period.

## Physical Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with performing component studies?
7. What experience have you had in this locale?
8. May we see an example of a similar product done for another association?
9. What information do you require from the association in order to start?
10. When will you begin the study?
11. Will you be measuring the components or using drawings?
12. Will you make a physical inspection of each component? What percentage of components will you inspect for fences, walls, controllers, buildings, etc.?
13. How will you determine the cost of replacement?
14. What written sources will be used?
15. How long will it be before we have the final product?
16. Will the report provide the estimated useful life of each component?
17. Will the report provided the estimated remaining life of each component?
18. Will the report provide the current costs of repair or replacement of each component?
19. Will the report provide the future costs of repair or replacement for each component and/or the inflation rate to be applied to each component?
20. Will the report provide information on proper maintenance to help assure realization of the estimated remaining life of each component? Will the report include visuals such as photographs or video?
21. Do you have liability insurance?
22. Do you have workers' compensation insurance?
23. Please provide three references (name, phone, nature of work).
24. Cost for revisions and/or updates.

## Financial Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with community association budgeting?
7. May we see an example of a completed financial analysis?
8. What information do you require from the association in order to start?
9. When will you begin the study?
10. How long will it be before we have the final product?
11. Will the report provide current and future estimated liability computations?
12. Will the report provide current and future estimated cash balances by year?
13. Will the report provide current and future repair replacement costs?
14. Will the report present alternative funding plans?
15. Will the report provide a description of assumptions and methodology, a narrative funding plan, and a graphic depiction for easier board and member understanding?
16. Will the report tell how much of a monthly contribution is needed for the reserves?
17. Do you have professional liability insurance?
18. Please provide three references (name, phone, nature of work).

# **Appendix F – Sample Financial Analysis**

**Sample Financial Analysis – Estimated Cash Requirements by Year**

**(30 year plan – 3 components; values shown for years 1-5, 15, and 30 only)**

Major Component	Estimated Useful Life	Estimated Remaining Life	Estimated Current Cost to Replace	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	5	2	\$10,000			\$10,000					
Paving	7	3	\$14,000				\$14,000				
Roofing	15	4	\$30,000					\$30,000			
<b>Total Costs</b>			<b>\$54,000</b>			<b>\$10,000</b>	<b>\$14,000</b>	<b>\$30,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Component cost increase factor @ 4.6% per annum					1.00	1.046	1.094	1.144	1.197	1.877	3.685
Estimated replacement cost, in scheduled year (apply cost factor to total replacement costs)					\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0

<i>Cash Flow Forecasts</i>	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Assessments, regular		\$1,500	\$1,800	\$2,160	\$2,592	\$3,110	\$10,906	\$30,515
Assessments, special		\$0	\$0	\$0	\$30,000	\$0	\$0	\$0
After-tax interest reserve account income, @ 5.775%		\$1,271	\$1,430	\$1,013	\$312	\$229	\$1,519	\$6,482
<b>Total cash receipts</b>		<b>\$2,771</b>	<b>\$3,230</b>	<b>\$3,173</b>	<b>\$32,904</b>	<b>\$3,339</b>	<b>\$12,426</b>	<b>\$36,997</b>
Major component costs (from total above)		\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0
Cash receipts – cash disbursements		\$2,771	(\$7,230)	(\$12,145)	(\$1,430)	\$3,339	\$12,426	\$36,997
Cash balance, beginning of year		\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$26,311	\$112,241
Cash balance, end of year	\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238

<i>Summary</i>	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Estimated liability (total from next page)	\$36,000	\$43,932	\$52,518	\$50,461	\$43,095	\$15,026	\$74,602	\$154,173
Less cash balance	\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238
<b>Estimated unfunded liability</b>	<b>\$14,000</b>	<b>\$19,162</b>	<b>\$34,977</b>	<b>\$45,065</b>	<b>\$39,128</b>	<b>\$7,720</b>	<b>\$35,865</b>	<b>\$4,935</b>
Estimated unfunded liability per unit (35 units)	\$400	\$547	\$999	\$1,288	\$1,118	\$221	\$1,025	\$141



**Sample Financial Analysis – Computation of Major Component Liability by Year**

<i>Major Component Replacement Liability</i>		End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
<b>Painting</b>	Useful life	5	5	5	5	5	5	5	5
	Remaining life	2	1	0	4	3	2	2	2
	Replacement cost	\$10,000	\$10,460	\$10,941	\$11,971	\$11,971	\$12,522	\$19,632	\$38,543
	Liability	\$6,000	\$8,368	\$10,941	\$2,394	\$4,788	\$7,513	\$11,779	\$23,126
<b>Paving</b>	Useful life	7	7	7	7	7	7	7	7
	Remaining life	3	2	1	0	6	5	2	1
	Replacement cost	\$14,000	\$14,644	\$15,318	\$16,022	\$16,759	\$17,530	\$27,485	\$53,961
	Liability	\$8,000	\$10,460	\$13,130	\$16,022	\$2,394	\$5,009	\$19,632	\$46,252
<b>Roofing</b>	Useful life	15	15	15	15	15	15	15	15
	Remaining life	4	3	2	1	0	14	4	4
	Replacement cost	\$30,000	\$31,380	\$32,823	\$34,333	\$35,913	\$37,564	\$58,897	\$115,630
	Liability	\$22,000	\$25,104	\$28,447	\$32,044	\$35,913	\$2,504	\$43,191	\$84,795
<b>Total liability</b>		<b>\$36,000</b>	<b>\$43,932</b>	<b>\$52,518</b>	<b>\$50,461</b>	<b>\$43,095</b>	<b>\$15,026</b>	<b>\$74,602</b>	<b>\$154,173</b>

# **Appendix G – Sample Summary Report**

**Reserve Study Summary for (Name of Association)  
(Date)**

This reserve study is an assessment of the property and contains projections regarding anticipated future projects and expenses necessary to maintain the property in good condition. Included are the major components of the community’s property that are likely to require repair, restoration, or replacement during the next (##) years. Excluded are items covered in the annual operating budget and items that are not community property.

The reserve study and this summary were prepared by (name of individual(s)). The previous reserve study was done by (name of individual(s)) in (date). The property was originally constructed in (date).

This study provides a rational basis for the Board of Directors to make decisions about annual budgets and future funding. The report contains a financial analysis of possible methods of funding the projected future expenses. These are to be understood as examples only, not as mandated solutions. Only the Board has the responsibility and authority to decide funding.

**A reserve study is not a spending plan.** The Board should assess the condition of the property each year and make spending decisions based on current circumstances. The Board will review the preparer’s recommendations and make decisions accordingly. The reserve analyst has no authority to decide assessments or spending.

In calculating funding requirements for reserves, the following factors were considered:

- All common element components, their quantities, and expected service lives
- The current conditions, remaining service lives, and values of the components
- The impact of cost inflation over time

Reserve funding needs were calculated by estimating the cost and timing for repair, restoration, or replacement projects during the next (##) years. After accounting for cost inflation, assumed to be (# percent) annually, the total reserve expenses by year were estimated for the next (##) years.

Funding for these estimated expenses was calculated using the (type of method of used) by taking the current amount in reserves (\$dollars) and the current annual assessment for reserves (\$dollars), and calculating the future assessments needed to pay for the future expenses.

The following is a summary of the projected reserve expenses and assessments for the next five years.

<b>Year</b>	<b>Expenses</b>	<b>Assessments</b>	<b>Amount in Reserves</b>	<b>Comments</b>
20##	\$#####	\$#####	\$#####	
20##	\$#####	\$#####	\$#####	
20##	\$#####	\$#####	\$#####	
20##	\$#####	\$#####	\$#####	

Details are in the full reserve study report dated (date). The estimates prepared are subject to review and revision by the Board. The (applicable statute) requires that a reserve study must be done at least every five years.

# Appendix H – Calculating Reserve Deficit Using Interest and Inflation

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For this example, use the following information for replacement of a roofing component.

(Note: The  $\approx$  symbol refers to a rounded figure.)

Component	Age in Years as of 12/31/2018 (Effective Age)	Estimated Useful Life (UL)	Estimated Remaining Useful Life (RUL)	Replacement Cost	Interest Rate	Inflation Rate
<b>Roofing (wood shingle)</b>	11	15	4	\$30,000	5% (.05)	3% (.03)

$$Desired\ Balance = \left( \frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age \right) + \left( \frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Interest\ Rate)^{Remaining\ Life\ (RUL)}} \right) - \left( \frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Inflation\ Rate)^{Remaining\ Life\ (RUL)}} \right)$$



$$Desired\ Balance = \left( \frac{\$30,000}{15} \times 11 \right) + \left( \frac{\$30,000/15 \times 11}{(1 + .05)^4} \right) - \left( \frac{\$30,000/15 \times 11}{(1 + .03)^4} \right)$$



$$\textit{Desired Balance} = (\$22,000) + \left( \frac{\$22,000}{(1.05)^4} \right) - \left( \frac{\$22,000}{(1.03)^4} \right)$$



$$\textit{Desired Balance} = (\$22,000) + \left( \frac{\$22,000}{1.21550625} \right) - \left( \frac{\$22,000}{1.12550881} \right)$$



$$\textit{Desired Balance} = (\$22,000) + (\approx \$18,099.45) - (\approx \$19,546.72)$$



$$\textit{Desired Balance} = \$20,552.73 \approx \$20,553$$