

VIRGINIA

Basic Information on community association operations in this state

<p>1. Is UCA the legal basis for community associations?</p> <ul style="list-style-type: none"> • MRECA • Title 44, Chapter 4, amendments in chapter 471 approved March, 2016 	<p>YES NO</p>
<p>2. Do state laws/regulations (in general) apply to Condominium Associations and Homeowner Associations, and Coop Associations equally?</p> <p style="text-align: center;">FOCUS IS COMMON INTEREST COMMUNITIES</p> <ul style="list-style-type: none"> • Horizontal Property Act Title 55, Chapter 4.1 • Condominium Act Title 55, Chapter 4.2 • Property Owners' Association Act (Applies to HOAs) Title 55, Chapter 26 • Residential Property Disclosure Act Title 55, Chapter 27 • Common Interest Community Management Fund Title 55, Chapter 29 • Common Interest Communities – Professions and Occupations Title 54.1, Chapter 23.3 	<p>YES NO</p>
<p>3. What state agency regulates community associations?</p> <p style="text-align: center;">DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION, THE COMMON INTEREST COMMUNITY BOARD http://www.dpor.virginia.gov/Boards/CIC-Board/</p> <p><i>NOTE: VA is one of 8 U.S. states with an Ombudsman's Office for Property Associations.</i> <i>NOTE: Time shares are not considered cooperative communities.</i></p>	
<p>4. Are community associations, HOAs registered as business entities or nonprofit corporations?</p> <p style="text-align: center;">NONPROFIT</p> <ul style="list-style-type: none"> • The Virginia Nonstock Corporation Act or the "Act." § 13.1-801. <p><i>NOTE: Incorporated HOAs run by volunteers may not be bound by the same declarations and restrictions as unincorporated HOAs. If your HOA is incorporated, volunteer members should file the articles of incorporation and annual reports with the Commonwealth's State Corporation Commission (SCC). Some HOAs have their declarations and restrictions recorded with the local Clerk of Court Land Record Office. (Source: HOA-USA.com)</i></p>	
<p>5. How many community associations in this state?</p> <p><small>(Source: CAI Fact Book 2016 Statistics)</small></p>	<p>8,600 est'd.</p>

6. Does this state have laws that regulate use of technology?	YES NO
If Yes, do these laws impact:	
• Information privacy;	YES
• Data access;	YES
• Identity Theft;	YES
• Data breach?	YES

Key Statutes - Association/CID specific Cyber Security, Data Access and Privacy

Title 55 references use of common interest community manager’s websites and electronic distribution of records in multiple sections

- Chapter 26, sections 55.509.6 relates to disclosure packets
- Chapter 4.2, sections 44-79.97 “resale by purchaser/resale certificates (If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period.)

Relevant Legislative Trends

- **H.B. 817** Status: Signed by Governor, Chap. 610 Relates to the Commonwealth Freedom of Information Act; relates to record exclusions, including those related to cybersecurity; relates to the rule of redaction; provides provisions for public records that contain both excluded and nonexcluded information and the duty redact those records; provides only portions of a record subject to exclusion may be withheld and all portions thereof not excluded shall be disclosed
- **S.B. 494** Status: Signed by Governor, Chap. 716 Relates to the Commonwealth Freedom of Information Act; relates to record exclusions, including those related to cybersecurity; relates to the rule of redaction; provides provisions for public records that contain both excluded and nonexcluded information and the duty redact those records; provides only portions of a record subject to exclusion may be withheld and all portions thereof not excluded shall be disclosed.

Statutes related to Data Security/retention/protection/disposal and penalties

- VA Administrative Code § 2.2-2009 governs electronic data security of gov’t agencies & education
- **Va. Code Title 18.2 Chapter 6 applies to “any person”** ... “Person: includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof. See Virginia Code 1-230”

Focus for breach notification is Electronic ONLY

- § 18.2-186.4:1 Internet publication of personal information of certain public officials
- § 18.2-186.6 Breach of personal information notification
- § 18.2-152.4 - Computer trespass; penalty.

“Using a computer to gather identifying information...” Class 6 felony....sells or distributes such information in the commission of a crime...Class 5 felony.

Violations of this section shall be punishable as a Class 1 misdemeanor. Any violation resulting in financial loss of greater than \$200 shall be punishable as a Class 6 felony. Any second or subsequent conviction shall be punishable as a Class 6 felony. Any violation of subsection B where five or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 5 felony. Any violation of subsection B where 50 or more persons' identifying information has been obtained, recorded, or accessed in the same transaction or occurrence shall be punishable as a Class 4 felony. Any violation resulting in the arrest and detention of the person whose identification documents or identifying information were used to avoid summons, arrest, prosecution, or to impede a criminal investigation shall be punishable as a Class 5 felony.

- Notification requirements applicable to individuals or entities that own, license or maintain covered info.
- Some types of businesses may be exempt from some or all of these requirements and noncommercial entities may be subject to different requirements.

Covered Info – Broader than some other states (includes medical data and passwords):

- First name or first initial and last name, plus: Social Security number; driver's license or state identification card number; financial account, credit card or debit card number, in combination with any required security or access code, or password that would permit access to a resident's financial account; or medical information (as defined).
- Includes Encryption Safe Harbor
- Risk of Harm Analysis allows delay of notification pending law enforcement or national/homeland security
- Harm Threshold, > 1000 residents, must notify all nationwide CRAs
- Must notify Attorney General without unreasonable delay
- Requires 3rd party notice
- Civil Penalties

Identity theft statutes and penalties

- **§ 18.2-186** False statements to obtain property or credit
- **§ 18.2-186.3** Identity theft; penalty; restitution; victim assistance
- **§ 18.2-186.3:1** Identity fraud; consumer reporting agencies; police reports
- **§ 18.2-186.4** Use of a person's identity with the intent to coerce, intimidate, or harass...

A. It shall be unlawful for any person, without the authorization or permission of the person or persons who are the subjects of the identifying information, with the intent to defraud, for his own use or the use of a third person, to:

1. Obtain, record or access identifying information which is not available to the general public that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

Related General Business/Organization Statutes (non-specific to Associations)

ABOVE