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**HOUSE BILL NO. 2750****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws  
on January 30, 2025)

(Patrons Prior to Substitute—Delegates Oates and Coyner [HB 2292])

A *BILL to amend and reenact §§ 54.1-2353, 54.1-2354.5, 55.1-1837, and 55.1-1940.1 of the Code of Virginia, relating to common interest communities; termination of certain management contracts; transfer of association books and records.*

**Be it enacted by the General Assembly of Virginia:****1. That §§ 54.1-2353, 54.1-2354.5, 55.1-1837, and 55.1-1940.1 of the Code of Virginia are amended and reenacted as follows:****§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.**

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. *The common interest community manager shall transfer and release all funds and close bank accounts maintained on behalf of an association within a reasonable time after termination of the contract for management services without additional cost to the association.*

B. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

D. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the

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60 court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to  
61 prevent loss of property of one or more of the associations to which the subject common interest community  
62 manager provides management services.

63 ~~D. E.~~ In any proceeding under subsection ~~C D~~, any person or entity known to the Board to be indebted to  
64 or having in his possession property, real or personal, belonging to or subject to the control of the subject  
65 common interest community manager's business and which property the Board reasonably believes may  
66 become part of the receivership assets shall be served with a copy of the petition and notice of the time and  
67 place of the hearing.

68 ~~E. F.~~ The court shall describe the powers and duties of the receiver in its appointing order, which may be  
69 amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order,  
70 (i) prepare and file with the Board a list of all associations managed by the subject common interest  
71 community manager; (ii) notify in writing all of the associations to which the subject common interest  
72 community manager provides management services of the appointment and take whatever action the receiver  
73 deems appropriate to protect the interests of the associations until such time as the associations have had an  
74 opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records  
75 and information to such successor common interest community manager; (iv) identify and take control of all  
76 bank accounts, including without limitation trust and operating accounts, over which the subject common  
77 interest community manager had signatory authority in connection with its management business; (v) prepare  
78 and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's  
79 control for submission to the court within four months of the appointment and annually thereafter until the  
80 receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject  
81 common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully  
82 diverted from the subject common interest community manager's business, or assets acquired with funds  
83 wrongfully diverted from the subject common interest community manager's business; (viii) terminate the  
84 subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject  
85 common interest community manager; (x) determine the nature and amount of all claims of creditors of the  
86 subject common interest community manager, including associations to which the subject common interest  
87 community manager provided management services; and (xi) prepare and file with the court a report of such  
88 assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in  
89 accordance with the provisions of subsection ~~F G~~.

90 ~~F. G.~~ Upon the court's approval of the receiver's report referenced in subsection ~~E F~~, at a hearing after  
91 such notice as the court may require to creditors, the receiver shall distribute the assets of the common  
92 interest community manager and funds in the receivership first to clients whose funds were or ought to have  
93 been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for  
94 fees, costs, and expenses awarded pursuant to subsection ~~G H~~, and thereafter to the creditors of the subject  
95 common interest community manager, and then to the subject common interest community manager or its  
96 successors in interest.

97 ~~G. H.~~ A receiver appointed pursuant to this section shall be entitled, upon proper application to the court  
98 in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are  
99 not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest  
100 Community Management Recovery Fund as a cost of administering the Fund pursuant to § 54.1-2354.5, to  
101 the extent that the said Fund has funds available. The Fund shall have a claim against the subject common  
102 interest community manager for the amount paid.

103 ~~H. I.~~ The court may determine whether any assets under the receiver's control should be returned to the  
104 subject common interest community manager.

105 ~~I. J.~~ If the Board shall find that any common interest community manager is insolvent, that its merger into  
106 another common interest community manager is desirable for the protection of the associations to which such  
107 common interest community manager provides management services, and that an emergency exists, and, if  
108 the board of directors of such insolvent common interest community manager shall approve a plan of merger  
109 of such common interest community manager into another common interest community manager, compliance  
110 with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community  
111 manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the  
112 holders of more than two-thirds of the outstanding shares of such insolvent common interest community  
113 manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that  
114 a common interest community manager is insolvent, that the acquisition of its assets by another common  
115 interest community manager is in the best interests of the associations to which such common interest  
116 community manager provides management services, and that an emergency exists, it may, with the consent of  
117 the boards of directors of both common interest community managers as to the terms and conditions of such  
118 transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the  
119 assets of such insolvent common interest community manager to such other common interest community  
120 manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§

121 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale  
 122 of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of  
 123 assets be sent to the stockholders of record of the insolvent common interest community manager for the  
 124 purpose of providing such shareholders an opportunity to challenge the finding that the common interest  
 125 community manager is insolvent. The relevant books and records of such insolvent common interest  
 126 community manager shall remain intact and be made available to such shareholders for a period of 30 days  
 127 after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is  
 128 not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that  
 129 such common interest community manager was solvent, it shall rescind its order entered pursuant to this  
 130 subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds  
 131 that such common interest community manager was insolvent, its order shall be final.

132 J. K. The provisions of this article are declared to be remedial. The purpose of this article is to protect the  
 133 interests of associations adversely affected by common interest community managers who have breached  
 134 their fiduciary duty. The provisions of this article shall be liberally administered in order to protect those  
 135 interests and thereby the public's interest in the quality of management services provided by Virginia  
 136 common interest community managers.

137 **§ 54.1-2354.5. Common Interest Community Management Recovery Fund.**

138 A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in  
 139 this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

140 B. Each common interest community manager, at the time of initial application for licensure, and each  
 141 association filing its first annual report after the effective date shall be assessed \$25, which shall be  
 142 specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or  
 143 annual filing fee and transferred to the Fund by the Director within 30 days.

144 All assessments, except initial assessments, for the Fund shall be deposited within three business days  
 145 after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or  
 146 savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks  
 147 in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance  
 148 agency shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit  
 149 of these funds in federally insured banks, savings and loan associations, or savings banks located in the  
 150 Commonwealth shall not be considered investment of such funds for purposes of this section. Funds  
 151 maintained by the Director may be invested in securities that are legal investments for fiduciaries under the  
 152 provisions of § 64.2-1502.

153 Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The  
 154 remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest  
 155 Community Management Information Fund, established pursuant to § 54.1-2354.2, or accrue to the Fund.

156 C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the Director  
 157 determines that the principal balance of the Fund is or will be less than such minimum principal balance, the  
 158 Director shall immediately inform the Board. At the same time, the Director may recommend that the Board  
 159 transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to  
 160 bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be  
 161 considered by the Board within 30 days of the notification of the Director.

162 D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum  
 163 amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each  
 164 association and each common interest community manager, within 30 days of notification by the Director, a  
 165 sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of  
 166 such assessment shall be allocated among the associations and common interest community managers in  
 167 proportion to each payor's most recently paid annual assessment, or if an association or common interest  
 168 community manager has not paid an annual assessment previously, in proportion to the average annual  
 169 assessment most recently paid by associations or common interest community managers, respectively. The  
 170 Board may order an assessment at any time in addition to any required assessment. Assessments made  
 171 pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time  
 172 of license renewal.

173 Notice to common interest community managers and the governing boards of associations of these  
 174 assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail  
 175 addressed to the Director within 45 days after the mailing of such notice.

176 E. If any common interest community manager fails to remit the required payment within 45 days of the  
 177 mailing, the Director shall notify the common interest community manager by first-class mail at the latest  
 178 address of record filed with the Board. If no payment has been received by the Director within 30 days after  
 179 mailing the second notice, the license shall be automatically suspended. The license shall be restored only  
 180 upon the actual receipt by the Director of the delinquent assessment.

181 F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall

182 notify the association by first-class mail at the latest address of record filed with the Board. If no payment has  
183 been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing  
184 and willful violation of this section by the governing board of the association.

185 G. At the close of each fiscal year, whenever the balance of the Fund exceeds \$5 million, the amount in  
186 excess of \$5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9  
187 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to  
188 this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless  
189 of the balance of the Fund.

190 H. A claimant may seek recovery from the Fund subject to the following conditions:

191 1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

192 2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an  
193 award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have  
194 been held in a fiduciary capacity by the subject common interest community manager, the Director shall  
195 report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any  
196 award of fees, costs, and expenses pursuant to subsection ~~G~~ H of § 54.1-2353 by the court appointing the  
197 receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject  
198 common interest community manager, as certified by the court appointing the receiver.

199 3. If the Board finds there has been compliance with the required conditions, the Board shall issue a  
200 directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no  
201 event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the  
202 aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any  
203 award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or  
204 ought to have been held in a fiduciary capacity by the subject common interest community manager. If the  
205 Board has reason to believe that there may be additional claims against the Fund, the Board may withhold  
206 any payment from the Fund for a period of not more than one year. After such one-year period, if the  
207 aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board  
208 among the claimants and paid in the above payment order from the Fund in proportion to the amounts of  
209 claims remaining unpaid.

210 4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the  
211 Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such  
212 claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations  
213 receiving distributions from the Fund against the common interest community manager to the extent that such  
214 rights were satisfied from the Fund.

215 5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be  
216 considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in  
217 accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

218 6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any  
219 court that is contrary to any distribution recommended or authorized by it.

220 7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board  
221 shall immediately revoke the license of the common interest community manager whose actions resulted in  
222 payment from the Fund. The common interest community manager whose license was so revoked shall not be  
223 eligible to apply for a license as a common interest community manager until he has repaid in full the amount  
224 paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment  
225 from the Fund.

226 8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action  
227 against any common interest community manager for any violation of statute or regulation, nor shall the  
228 repayment in full by a common interest community manager of the amount paid from the Fund on such  
229 common interest community manager's account nullify or modify the effect of any disciplinary proceeding  
230 against such common interest community manager for any such violation.

231 **§ 55.1-1837. Termination and duration of certain management contracts.**

232 A management contract that contains an automatic renewal provision may be terminated by the  
233 association or the common interest community manager at any time without cause *and without penalty* upon  
234 not less than 60 days' written notice.

235 **§ 55.1-1940.1. Termination and duration of certain management contracts.**

236 A management contract that contains an automatic renewal provision may be terminated by the unit  
237 owners' association or the common interest community manager at any time without cause *and without*  
238 *penalty* upon not less than 60 days' written notice.