

**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



ASSOCIATION COMPLAINT PROCEDURES

FEBRUARY 10, 2024

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Program Overview

- Statutory Background
- The Ombudsman
- Association Complaint Procedure
- Ombudsman Annual Report
- Ombudsman Determinations
- Resources



STATUTORY BACKGROUND



Common Interest Community Board

- 2008 legislation by the Virginia General Assembly established the Virginia Common Interest Community Board.
- Eleven-citizen board appointed by the Governor consisting of:
 - 3 association managers
 - 1 association attorney
 - 1 association accountant
 - 1 time-share industry representative
 - 2 developer representatives
 - 3 citizens:
 - 2 association residents
 - 1 current or former board member
- Housed within the Virginia Department of Professional and Occupational Regulation.



Common Interest Community Board

- Regulation of Community Managers
- Management Firm Licensure
- Manager Certification
- Recovery Fund
- Compliance
- Property Registration Program
- Condominium & Time-share Registration Program
- Common Interest Community Management Information Fund
- Annual Report Filing Fee and Assessment
- Resale Disclosure



Common Interest Community Ombudsman

- Replaced, with an expanded scope of responsibility, Common Interest Community Liaison.
- Ombudsman must be a member in good standing of the Virginia State Bar.
- The Ombudsman is responsible for helping association members understand their rights and the processes available to them under the Virginia laws and regulations that govern common interest communities.



Association Complaint Requirements

Common interest community associations must:

- Establish a written procedure for resolving written complaints.
- Maintain a record of each complaint for at least one year.
- Provide association complaint procedure upon request.



Complaints

- Complaints may be submitted by association members or citizens.
- Complaint form (if used) should include:
 - Contact information for the association or manager, the Office of Ombudsman; and
 - A clear description of how to submit the complaint and the complainant's right to file a NFAD with the OCICO.



THE OMBUDSMAN

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Office of the Ombudsman

- Office of Common Interest Community Ombudsman & Ombudsman created by Virginia Code § 54.1-2354.3.
- Ombudsman **must** be a Virginia attorney.
- Appointed by Director of Department of Professional and Occupational Regulations.
- Separate and distinct from Common Interest Community Board.



Ombudsman Duties

- Answers inquiries related to cic law.
- Provides information concerning common interest communities.
- Makes information available via a website.
- Receives Notices of Final Adverse Decision.



Ombudsman Duties

- Helps association members understand their rights and the processes available to them under the Virginia laws and regulations that govern common interest communities.
- Provides non-binding explanations of laws governing associations.
- Provides referrals to public and private agencies offering alternative dispute resolution if appropriate.



Other Ombudsman Duties

Maintains data on:

- Inquiries received
- Nature of requested assistance
- Notices of final adverse decision
- Actions taken
- Disposition of each matter



Other Ombudsman Duties

- Monitors changes in federal and state law relating to common interest communities.
- Addresses issues regarding common interest community law.
- Reviews Notices of Final Adverse Decision
- Provides an annual report to the General Assembly.



ASSOCIATION COMPLAINT PROCEDURE



Association Complaint Procedure

ALL common interest community associations **MUST** have a written association complaint procedure.



Overview

- Complainant submits complaint to Association.
- Association provide acknowledgement, notice of time, date and location of consideration.
- After consideration, association issues notice of final determination.
- If **adverse**, complainant may submit notice of **final adverse decision** to Ombudsman.
- If within Ombudsman's jurisdiction, Ombudsman may issue non-binding determination.



The Complaint

Complaints:

- Must concern a matter inconsistent with common interest community law or regulation.
- **NOT** violation of the association governing documents or rules or any other civil or criminal law.
- Must be in writing.



Complaint Procedure Requirements

Internal complaint procedure must:

- Provide written acknowledgment of complaint within 7 days of receipt.
- Outline process by which complaints are delivered by association
- Clearly describe specific documentation required to be submitted with complaint.



Complaint Procedure Requirements

- Association must have reasonable and timely method for identifying and requesting additional information if necessary.
- Notice of date, time and location that the matter will be considered must be provided to complainant.



Final Determination Requirements

- In writing
- Deliver to complainant within 7 days.
- Must include:
 - Citations to association documents, law or regulations that led to final determination.
 - Association registration number and name and license number of community manager.
 - Complainant's right to file Notice of Final Adverse Decision and OCICO contact info.



Complaint Procedure – Record Keeping

- Must adhere to procedures established in Virginia Code, § 54.1-2354.4
- Record of each complaint must be maintained for no less than one year.



Summary

- All associations must have a written complaint procedure.
- Associations must consider correctly submitted association complaints.
- Associations must issue a decision on properly submitted complaints.



Summary

- If decision is adverse, complainant may “appeal” to Ombudsman.
- Only for violations of common interest community law, **NOT** governing documents.

***Common Interest Community Ombudsman
Regulations, § 18VAC48-70-10***



Notice of Final Adverse Decision

- Following final determination issued by association.
- Notice of Final Adverse Decision may be submitted to the Ombudsman for review.
- If the Ombudsman has jurisdiction, a determination may be provided.



Notice of Final Adverse Decision

- If the complaint concerns a question of common interest community law, the Ombudsman may issue a determination.
- Determinations can be found:

<http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations/>



Notice of Final Adverse Decision

- Provides complainant with opportunity for third-party review of complaint prior to taking other action.
- Complainant must submit Notice of Final Adverse Decision to Ombudsman on OCICO forms.



Notice of Final Adverse Decision

- Complainant must file within 30 days of final determination by the association.
- Must include a copy of complaint, association's final decision, all other required documentation and a \$25 filing fee or Request for Waiver.



Review of Final Determination

- Association complaint and final determination issued by association are reviewed by the Ombudsman.
- Ombudsman may request information from association or complainant, in their sole discretion.



Review of Final Determination

- Determination made by the Ombudsman is final, but non-binding.
- Decision is final and not subject to further review.
- Matter may be referred to the CICB for further action.



Referral to the CICB

The CICB has the authority to

- File Suit
- Intervene
- Issue a Cease-and-Desist Order
- Assess Monetary Penalties



Direct Complaints

A complaint can be submitted directly to the Ombudsman.

- If the association does not have a complaint procedure in place.
- If the association does not respond to a complaint in a reasonable time.
- If the complaint alleges a violation of the Manager Regulations (DPOR).



Summary

The Office of the Common Interest Community Ombudsman reviews Notices of Final Adverse Decision resulting from the submission of an Association Complaint through an Association's Internal Complaint Procedure.



Summary

Purpose of Ombudsman review:

To determine whether the Final Determination conflicts with law or regulations governing common interest communities



Summary

- Determination is within the sole discretion of the Ombudsman and is not subject to further review or appeal.
- Determination is not a judicial verdict, court decree, Board order or official opinion.
- Determination is non-binding and strictly limited to law and regulations pertaining exclusively to common interest communities.



Summary

ALL Notices of Final Adverse Decision filed with the OCICO:

- Must begin as an association complaint submitted to an Association, through its association complaint procedure; and
- Must concern a matter regarding action, inaction, or decision by the governing board, managing agent, or association that is inconsistent with common interest community law and regulations.



Summary

Only after the Association has provided a final decision adverse to the Complainant can Notice of Final Adverse Decision be filed with the Ombudsman.



OMBUDSMAN ANNUAL REPORT

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2022-2023 Annual Report

OCICO received 60 Notice of Final Adverse Decisions:

- 80% increase over prior year
- Multiple Complaints
- Complexity – time consuming review



Frequent Topics of Complaints

- Access to Books & Records
- Meetings & Notice
- Enforcement
- Method of communication
- Assessments



OMBUDSMAN DETERMINATIONS



Determinations

- Notice & Meetings
- Access to Books & Records
- Method of Communication
- Reserves & Budget
- Use of Technology
- Pesticide Application
- Resale & Disclosure



Determinations

- Upkeep of Condominium
- Compliance with Condominium Instruments
- Association Charges
- Member Meetings
- Right to serve on the Board



Books & Records

- Association must permit access to books and records but members do not have a right to receive copies.
- Owners must pay the cost for association providing copies of requested records.
- 5-day response requirement pertains to making records *available* for examination and copying, not providing copies.

Regency at Dominion Valley Owners Association

September 25, 2023

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Books & Records

- If request does not state any purpose at all, Associations not obligated to provide access to books and records.
- Complaint references member requests to have books & records provided on a flash drive - these concerns were not considered by the Ombudsman.
 - Past determinations - the Act does not require records be offered for inspection and copying in any particular format.

Pine Harbour Property Owners Association

April 3, 2023

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Complaints - Postage Costs

- Costs of mailings related to association complaints, such as certified mail, are not permitted under the Act, and there is no other authority cited to charge such expenses to members.
- Beyond scope of the Ombudsman's review as to whether such a charge, if authorized by the association declaration, would be permissible.

Chimney Hill Community Association

January 3, 2023

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Virtual Association Meetings

- Section 55.1-1832.G of the Property Owners' Association Act requires associations to make a reasonable alternative, at association expense, for a person to conduct business with the association without use of electronic means.
- The term *conducting business* is not defined in the Act, and Section 55.1-1832 does not overrule Section 55.1-1832.F, which allows association meetings to be held entirely by electronic means.

Bull Run Swim and Racquet Club

October 11, 2023



Misuse of Executive Session

- Due to the lack of record of board member discussion in executive session, Ombudsman is not in position to make any determination as to the propriety of executive session - ***Wexford Hills Homeowners Association - July 31, 2023***
- “Complaints related to executive session are always very difficult to determine since the very nature of an executive session is that it is a private meeting of the board and only for the very specific reasons set forth in common interest community law.” - ***Unit Owners Association of Regency at McLean, A Condominium - September 5, 2023***



Misuse of Executive Session

- Addressed use of executive session to consult with legal counsel when legal counsel was not present.
- “There is nothing in Section 55.1-1816.C that provides for review of attorney-client privileged legal advice. The only reference to legal counsel is that a board may enter executive session to **consult** with legal counsel. There is no language in the statute that allows for the review of written advice from an attorney in executive session.”
- Association is in violation of the Act when convening in executive session for the purpose of discussing written legal advice.

Cameron Station Community Association

December 19, 2023

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Communication Platforms

- Without providing a reason to block a members Facebook post, the member was denied the right to communicate with other members.
- Required association to reconsider rules governing its Facebook page and ensure that the association is not denying members the right to use this platform.
- Must ensure a lawful right exists to prohibit member posts to a designated platform and may wish to consult an attorney to discuss its communication policy.

Great Creek Landing Property Owners Association
July 26, 2023



Resources

- **Complaint Review Flow Chart** -
https://www.dpor.virginia.gov/sites/default/files/CIC_Ombudsman/CICO%20flowchart3.1.pdf
- **Filing a Notice of Adverse Decision** -
https://www.dpor.virginia.gov/sites/default/files/CIC_Ombudsman/FilingNotice_AdverseDecision.pdf
- **Association Complaint Form** -
https://www.dpor.virginia.gov/sites/default/files/CIC_Ombudsman/CICO%20Sample%20Assn%20Complaint%20Form.pdf
- **Ombudsman Report** -
<https://www.dpor.virginia.gov/sites/default/files/Reports%20and%20Studies/DPOR%20CICO%20Annual%20Report%202020-21.pdf>



Contact Information

Office of the Common Interest
Community Ombudsman

Department of Professional &
Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233
(804) 367-2941

Email: cicombudsman@dpor.virginia.gov

Website: www.dpor.virginia.gov/cic-ombudsman



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