

The “New” Virginia Association Complaint Process: FRIEND OR FOE ?

By Heather Gillespie
Common Interest Community Ombudsman
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July 1, 2008, brought about a sea change to community associations in Virginia. On that day, new legislation became effective that created the Common Interest Community Board, the Office of the Common Interest Community Ombudsman, and my position, the Common Interest Community Ombudsman. One of the specific requirements of this new legislation was that all common interest communities must “establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens.” [\[VA Code 55-530\(E\)\]](#)

As required by the new legislation, the Common Interest Community Board established an Ombudsman Regulatory Review Committee to draft complaint procedure regulations. That committee submitted the proposed Common Interest Community Ombudsman Regulations for the Governor's approval in December of 2009. Approval of the regulations was granted in May of 2012, and the regulations became effective July 1, 2012, with a 90-day grace period to allow associations to draft and adopt their complaint procedures, thus extending the actual implementation of the regulations to September 28, 2012.

Today, many association members, managers, and attorneys remain confused by the complaint process and are unsure how to implement it and ensure that an association is in compliance with the law and regulations. In reality, the premise of the required complaint process is really very simple. Owners in an association can file a complaint using the association's written complaint procedure if the subject matter of that complaint is related to “the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.” [\[18VAC48-70-10\]](#) Here, “applicable laws and regulations” refer to Virginia common interest community laws and regulations.

Once a written complaint has been submitted to the association, the association must acknowledge the complaint in writing, provide notice of the consideration of the complaint and, finally, provide a final determination of the complaint. If the complainant finds the final determination is contrary to what was sought, he or she has the option of submitting a “Notice of Final Adverse Decision” to my office and a formal determination will be issued identifying whether there appears to be a violation of common interest community law or regulations. If we believe that there has been such a violation, we will seek compliance. If the association is unwilling to come into compliance the matter will be referred to the Common Interest Community Board for possible enforcement action.

Implementation of the association complaint procedure has proven difficult for several reasons. One of the most common is that people do not, or will not, read the Common Interest Community Ombudsman Regulations.

I understand that no one likes reading regulations. But in this particular instance, the regulations were specifically written to be easily understood by everyone, not just attorneys. I regularly speak to people who are critical of the requirement that associations implement a complaint process and they tell me that they find this requirement onerous. In many instances, the people who complain have never read the regulations and are basing their opinion on misinformation and gossip.

Another misunderstanding about the complaint procedure is the belief it was intended to address *all* complaints. This is simply not the case, and from a logistical perspective would be impossible to carry out. While an association may have any type of process it considers appropriate to address violations related to the governing documents of the association, those types of violations are *not* the type of complaint suitable for submission through the association complaint process required by the new regulations. Neither my office nor the Common Interest Community Board has jurisdiction over the governing documents of an association, nor can we enforce those documents in the event that a complainant demonstrates a violation of them.

Finally, many owners are unwilling to submit a complaint to the association, or are afraid to do so. I believe you have to choose your battles. If an owner feels strongly enough about an issue, and it is appropriate for submission through the complaint process, that owner is the only one who can decide if he or she should move forward with a complaint.

If fear of an unfair decision from the association is holding a complainant back, the right to submit a Notice of Final Adverse Decision to my office is an excellent safety net to ensure that a complaint is reviewed objectively and with an eye toward statutory and regulatory compliance. This helps to ensure that associations adhere to the Common Interest Community Ombudsman Regulations, follow their own complaint processes, and abide by

common interest community law. If all else fails, litigation or some other form of legal action is always available, and the complaint process will never deny an individual the opportunity to have his or her day in court.

So, is the complaint process a friend or foe?

I believe this process can be a true friend to owners, managers, and association boards. There is so much that simmers below the surface in associations, and the complaint process provides owners the opportunity to raise concerns regarding possible violations of common interest community law or regulations, and at the same time, it provides associations and their boards an opportunity to learn, correct and improve.

In my perfect world, a properly submitted complaint might actually alert an association to a violation of common interest community law (i.e., failing to provide notice of committee meetings), help to educate the board about that violation, and result in a change that brings the association into compliance with the law. This is the potential beauty of the complaint process, and the reason I believe the complaint process provides an important step forward for community associations in Virginia.