

**DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION**



**OFFICE OF THE
COMMON INTEREST COMMUNITY OMBUDSMAN**

Report to the

**House Committee on General Laws
Senate Committee on General Laws and Technology
Housing Commission**

Annual Report 2016-2017



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PREFACE

The Office of the Common Interest Community Ombudsman prepared the report contained herein pursuant to § 55-530.C.11 of the *Code of Virginia*.

This annual report documents the activities of the Office of the Common Interest Community Ombudsman for the reporting period covering November 26, 2016, through November 25, 2017.

Office of the Common Interest Community Ombudsman
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EXECUTIVE SUMMARY

In 2008, the General Assembly created the Office of the Common Interest Community Ombudsman (“Office”), and the Common Interest Community Board (“CICB”), at the Department of Professional and Occupational Regulation (“DPOR”). In accordance with statutory requirements, this document reports on the activities of the Office for the period from **November 26, 2016, through November 25, 2017.**

Amendments to the Ombudsman Regulations (“Regulations”) became effective May 1, 2017. The Regulations, which govern the Office’s operations as well as community association complaint processes, now require a delinquent association filing for registration first to certify adoption of a written complaint procedure. Although difficulties persist in ensuring that all associations have complaint procedures in place as the law requires, generally the Office is successful in working with non-compliant associations to help them understand not only the legal requirement for a complaint procedure, but also what the procedure should contain. It remains extraordinarily rare for an association to refuse to adopt a complaint process once it understands the requirement to do so.

The Office continues to educate constituents about the proper method for submitting Notices of Final Adverse Decision (NFADs), but nevertheless receives filings from individuals who have never contacted the Office and who are insufficiently knowledgeable about the process. The overall number decreased when compared to last year, due in part to the fact that many submissions were so deficient—either in terms of documents excluded from the filing, or the incomplete complaint process preceding the filing—that the Office could not categorize them as NFADs nor accept them and returned them to the filer.

The Office referred no associations for investigation or enforcement action this year, suggesting the ombudsman model is working as intended. In all cases, associations were brought into compliance through education, guidance, and constant reminders of the applicability of common interest community laws and regulations. The goal of an ombudsman is to resolve conflict, and the fact that so many of the complaints and NFADs received by this Office are ultimately resolved without ever having to go through an enforcement process shows that the work of educating and guiding constituents daily is of enormous benefit.

OMBUDSMAN REGULATIONS & ROLE OF OFFICE

The Common Interest Community Ombudsman Regulations (18VAC48-70) require community associations to establish an internal complaint procedure. Previously, newly-formed associations or those not currently registered with the CICB were required to adopt a complaint procedure within three months of registration. New regulatory language, effective May 1, 2017, addresses situations where an association *should* be registered but has failed to do so. In such circumstances, rather than provide an additional three months for delinquent associations, the

amended regulations now require associations to certify at the time of filing that they have established and adopted the written complaint procedure. The Regulations detail the standards associations must satisfy to remain compliant with internal complaint procedure requirements, as well as eligibility criteria complainants must meet to obtain a Determination from the Ombudsman (as designee for the Agency Director).

The statutory framework for complaint processing, established by the legislature when the Ombudsman and CICB were initially formed, generally provides for the Office to accept and review only “Notices of Final Adverse Decision,” not *de novo* complaints from association members or owners. Such Notices of Final Adverse Decision (NFADs), as described in § 55-530 and the Regulations, are available after—and only after—a member or citizen submits a complaint to an association through the mandatory internal dispute resolution procedure. Complaints subject to review are legally restricted to allegations of violations of common interest community law or regulation (*not* association governing documents, which are contractual).

Upon receipt of an eligible complaint from an association member or owner, the association board is required to provide a definitive response to the complainant. If that final decision is “adverse” or contrary to whatever action or outcome the complainant sought, the complainant may *then* submit a NFAD to the Office for review by the Ombudsman (along with the statutorily mandated \$25 fee or a fee waiver request).

Additionally, if an owner fails to receive a response from the community association in a reasonable timeframe, or an individual requests a copy of the association’s complaint procedure and the association fails to provide one, a complaint alleging either of these regulatory violations may be submitted directly to the Office using a form specific to that purpose.

OFFICE ACTIVITIES

Complaint Statistics

During the 2016-17 reporting period, the Office responded to 1,596 telephone calls and 2,297 email messages. As always, the Office responds as quickly as reasonably possible to all inquiries, and generally provides a response within 24 hours to any phone call or email.

The volume of inquiries remains fairly steady, but a sizeable portion of the calls and emails are lengthy and require substantial time and research in order to respond fully and accurately. Simple questions related to common interest communities are rare; instead, requests are complex and necessitate in-depth review.

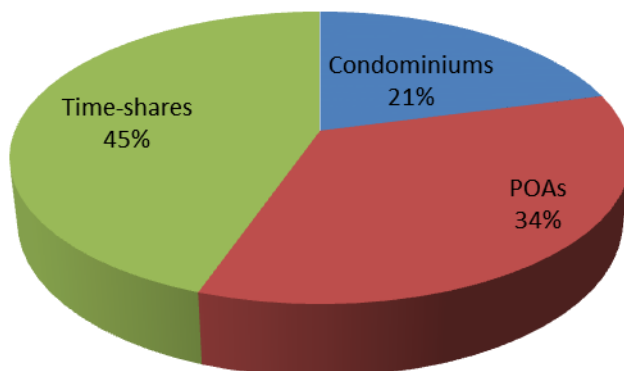
The Office received a total of 207 complaints (including 30 NFADs) this year:

- 44% related to Time-Shares;
- 34% related to Property Owners’ Associations;
- 21% related to Condominium Unit Owners’ Associations; and
- >1% related to Managers.

The most frequent complaints for 2016-17 related to time-shares; the Office received a total of 92 time-share complaints, 35 more than last year. Property Owners' Association complaints were the next most frequent complaint with a total of 71 (8 fewer than last year), followed by Condominium complaints with a total of 43 (the same number as received last year). No complaints related to Cooperatives were received this year and one complaint involving a licensed manager was improperly filed with the Office.

Common Interest Community complaints accounted for roughly 55% of the total number of complaints received this year, a number that decreased from last year owing to the sizable increase in time-share complaints.

Total Complaints 2016-2017

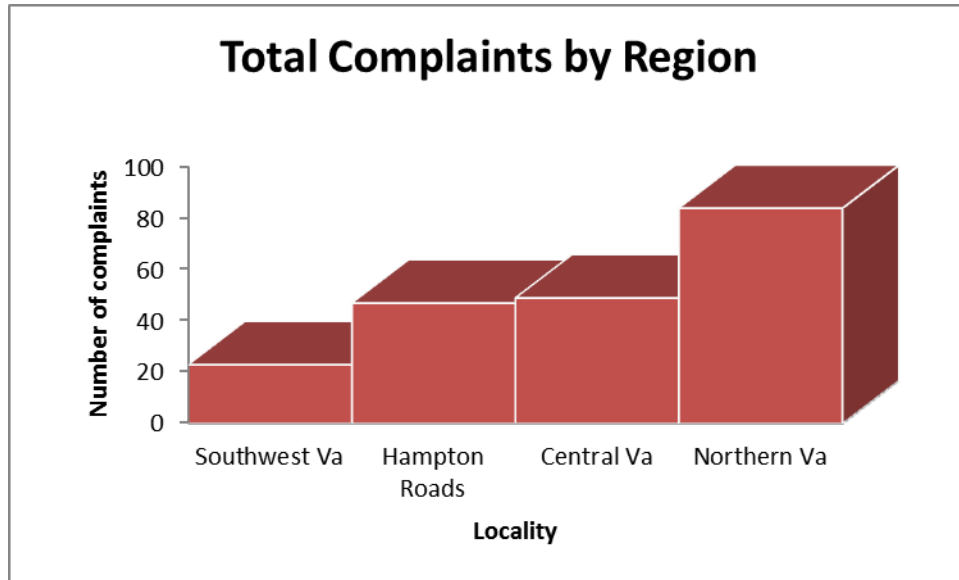


The Office closed 208 complaints in 2016-17, a 12% increase over the prior year.

Of complaints submitted, two key areas stood out: The first was the number of time-share complaints, which after decreasing in prior years has increased again and comprised 44% of all complaints received by the Office. The second was the number of associations that either failed to adopt a complaint procedure at all, or failed to respond to a complaint submitted through their adopted complaint process. Problems with complaint procedures make up 38% of all common interest community complaints received—and 18% of all complaints received by the Office.

Time-share complaints are unlikely ever to level out or disappear unless or until buyers take more time to educate themselves before purchasing. Ideally, buyers of time-shares would make every effort to review documents prior to signing. Alternatively, the Virginia Real Estate Time-Share Act provides a seven-day rescission period, so buyers should make every effort within that seven-day period to educate themselves about their documents in case they find something unexpected while they still can cancel the contract. Buyers may also be wise to consider consulting with an attorney, either prior to purchase or immediately afterward but prior to the end

of the rescission period, in order to obtain any insight or interpretation of the documents that may help to fully explain the obligations in the sales contract and other time-share documents.



Compliance & Enforcement

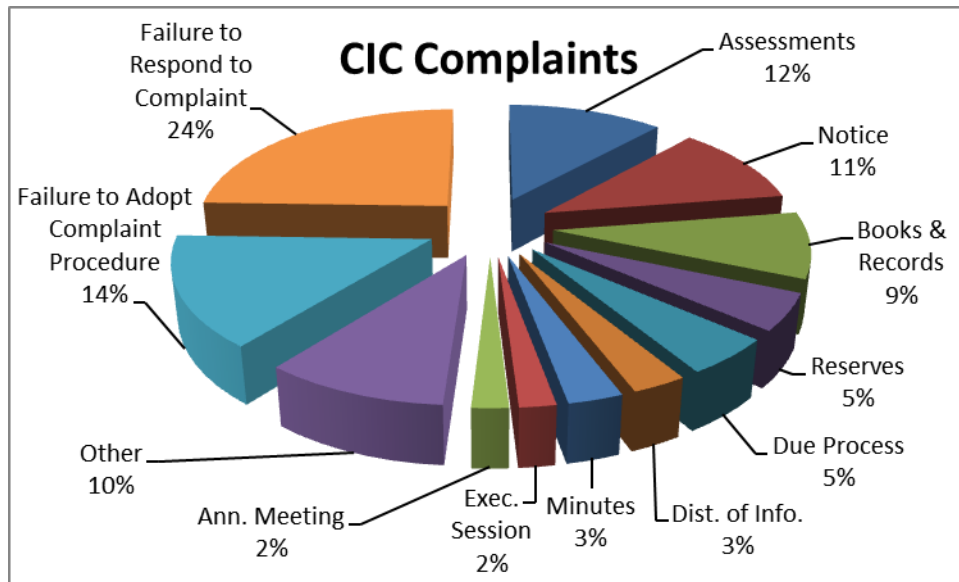
The Office referred no associations for investigation or enforcement action this past year. In all cases, associations were brought into compliance through education, guidance, and constant reminders of the applicability of common interest community laws and regulations.

The goal of an ombudsman is to resolve conflict, and the fact that so many of the complaints and NFADs received by this Office are ultimately resolved without ever having to go through an enforcement process suggests the work of educating and guiding constituents daily is of enormous benefit. Not only does this mean that associations come into compliance, it also avoids the additional costs associated with enforcement and investigation in those cases where compliance is obtained by the Office.

When individuals submit complaints directly to the Office, rather than using the association complaint procedure, the Ombudsman cannot provide a Determination because the complaints first must be routed through the internal association complaint procedure. In such cases, the complainants are counseled as to the proper method for submitting a complaint to the association, and where appropriate, the Office may offer a courtesy review of the complaint to ensure it does, in fact, allege a violation of common interest community law.

Although many of these complaints are not even processed by the Office, and never make it into our end-of-year total numbers, substantial time is often spent explaining to the complainant why the Ombudsman cannot provide a Determination and how to submit the complaint through the association. If the complaint is related to the governing documents of the association or the condominium instruments (rather than common interest community law), a longer explanation is

often necessary to help the individual understand that, if conversation with the association does not resolve the issue, they may need to consult with an attorney.



The largest number of common interest community complaints received by the Office (38%) involves allegations that an association has failed to adopt a complaint procedure or has failed to respond to a submitted complaint in a reasonable timeframe. Unlike in the past, when a complainant was simply unaware that their association had in fact adopted the complaint procedure, this year allegations that an association did not have a complaint procedure in place were valid in nearly all cases.

Complaints about failure to respond in a reasonable timeframe are difficult, as the Regulations do not set out what a reasonable timeframe might be. Generally, this Office takes the approach of looking for forward movement on the complaint in question. Provided an association is communicating with a complainant, acknowledging receipt of a complaint and letting the complainant know when consideration will take place, the Office will usually find it reasonable and sufficient, unless consideration is delayed interminably with no valid reason for doing so.

Apart from the complaints related to association complaint procedures, no clear patterns are apparent in the other complaint submissions. This year, complaint topics cut a broad swath through common interest community law, covering nine distinct categories along with a host of others numbering just one or two that were therefore grouped under “other.”

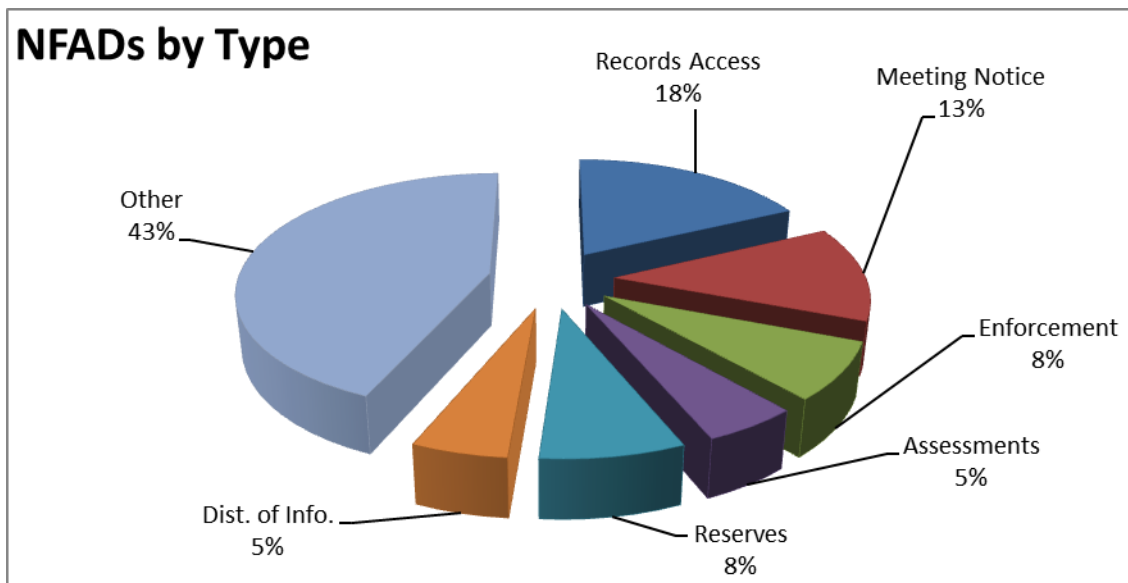
Ombudsman Determinations

The number of properly filed NFADs decreased from 48 last year to 30 during the 2016-17 reporting period. Twenty-nine percent of the submissions, however, did not fall under the Office’s jurisdiction—up from 17% of improperly filed NFADs last year—meaning they were not appropriate for the association complaint process or for consideration by the Ombudsman.

(These statistics do not include filings that did not go through any internal association complaint procedure, or for which no association consideration was required by the Regulations).

The Office issued Determinations related to properly filed NFADs as follows:

- Records Access (18%);
- Meeting Notice (13%);
- Enforcement (8%);
- Reserves (8%);
- Assessments (5%)
- Distribution of Information (5%); and
- Other (43%).



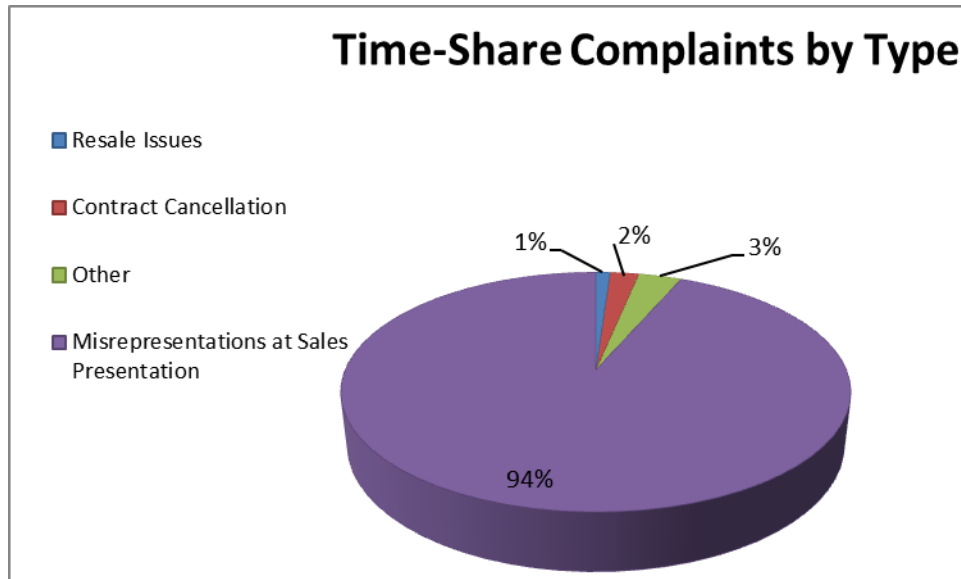
As with the complaints in general, there was an enormous variety of alleged statutory violations this past year, with complainants citing 23 different statutes in their NFAD submissions. This accounts for the substantial number of NFADs grouped into the “other” category.

The Office continues to post Determinations issued by the Ombudsman as a resource for owners and citizens who may wish to file NFADs or who are interested in learning more about similar issues. The published Determinations are listed by association name and subject matter area at <http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations>.

Time-Shares

Time-share complaints may be submitted directly to the Office because time-shares are not legally defined as common interest communities; therefore, they do not fall under the Regulations requiring the submission of complaints through an association complaint process.

Time-share complaints for the 2016-17 reporting period increased substantially over the prior year, for unknown reasons. This year the Office received 92 complaints, an increase of 38%, and the number of complainants alleging misrepresentations during the sales presentation increased by 10%. This means that virtually all time-share complaints received by the Office were related to allegations that purchasers were provided information during a sales presentation that was misleading and led them to make a decision they later regretted.



While time-share purchasers may well be provided misinformation or inaccurate information during some sales presentations, this Office has yet to receive any evidence of such; these presentations are generally verbal and therefore the buyers have nothing in writing to support their allegations. Moreover, it is also apparent that buyers are not always educating themselves prior to purchase. The Office received a number of complaints from owners who purchased their time-shares years ago, and are only now alleging they were provided misinformation during the sales presentation that led to their faulty decision.

EDUCATION & OUTREACH

The Ombudsman was invited to fewer presentations overall this year, but provided several very well received presentations to members of local Realtors® associations and also participated in multiple Community Association Institute (CAI) Expos and CA Days. In addition, the Ombudsman delivered an update to the Housing Commission’s CIC Workgroup, a presentation to a Norfolk law firm’s clients, and assisted DPOR managers in the preparation of the CIC portion of the training program provided to DPOR Board Members.

The Ombudsman took advantage of opportunities for the benefit of the Office by attending diverse educational programs in Virginia, including a Legal and Legislative Update in Hampton, an insurance program in Norfolk, and a local seminar on Dealing with Difficult People. She has

also been accepted to the Commonwealth Management Institute and will attend that program in the spring of 2018.

As always, the Ombudsman provided technical assistance and objective analysis for General Assembly members who are considering legislation; although she offers no opinions, she is able to serve as a sounding board and to give anecdotal and statistical information to help legislators address problem areas (as well as non-problem areas where no legislative deficiency exists). The Ombudsman continued her work on the Code Commission's Title 55 Recodification Workgroup, as it pertained to common interest community law. She also drafted a newsletter article on the association complaint process for the Central Virginia Chapter of CAI and another article for *Common Interests*, the CICB newsletter.

As a member of the CIC Workgroup of the Virginia Housing Commission, the Ombudsman reviewed and analyzed several proposals on topics including disclosure packet fees, developer control, liability insurance, reserves for stormwater facilities, and aligning records redaction requirements with the Freedom of Information Act.

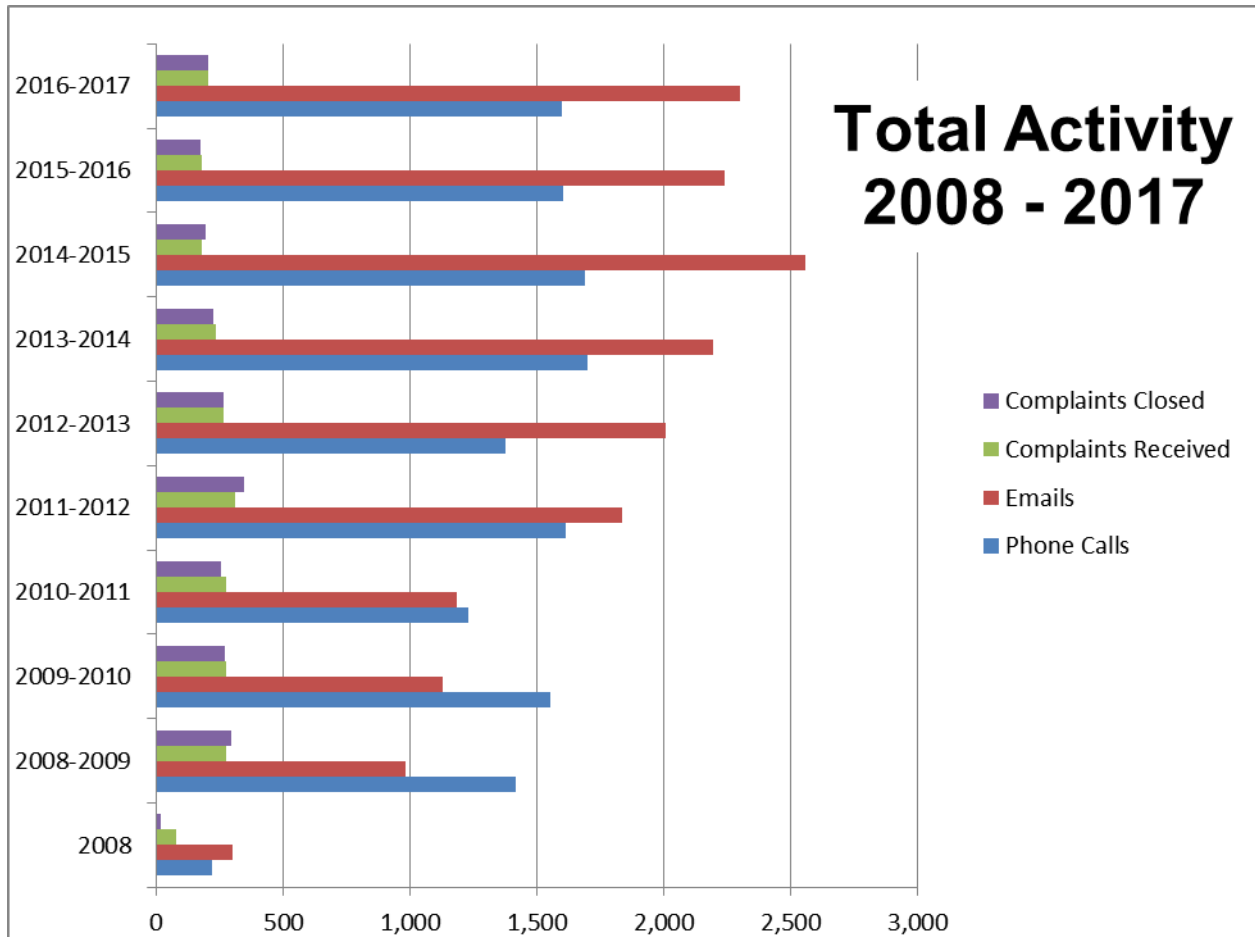
CONSTITUENT EXPECTATIONS

The 2016-17 reporting period was similar to prior year in terms of the number of inquiries received in the form of emails and phone calls. Although the Office does not collect statistical data at this level for corroboration, the subject matter of inquiries appears to be increasingly complex and far reaching. As a result, the Ombudsman has had to flex her research muscles in order to dig deeper into some of the statutes and look further afield to find answers.

The Office continues to help constituents find the proper venue for their concerns that fall outside the realm of common interest communities. Most frequently, we refer people to the Fair Housing Office, the Office of Attorney General, local law enforcement and code enforcement, and the State Corporation Commission. Recently there have also been several inquiries from other jurisdictions that are considering implementation of an ombudsman or similar program.

No evidence suggests that associations are willfully ignoring state law or regulations concerning the requirement to adopt a complaint procedure or to process a complaint in conjunction with that procedure. Instead, most associations appear simply to misunderstand the fact that they are legally required to do so.

That is not to say that all associations come into compliance immediately upon learning about their obligation; however, the fact that the Office initiated no investigations or enforcement actions this year is convincing proof that the ombudsman model is working as intended. Although the system takes some time, the Ombudsman has been able to encourage and elicit compliance in all situations this past year where it was required.



LEGAL DEVELOPMENTS

State Legislation

Successful legislation from the 2017 General Assembly Session listed below.

Bill No.	Patron	Description
HB 1554	Bulova	Provides that except as otherwise provided in the declaration of a property owners' association, a declaration may be amended by a two-thirds vote of the owners. The bill is in response to the Virginia Supreme Court decision in February 2016 in Tvardek v. Powhatan Village Homeowners Association, Inc.
HB 2045 SB 1231	Miller Stanley, Jr.	Provides that unless expressly authorized by the Property Owners' Association Act (§ 55-508 et seq.) or the declaration or as otherwise provided by law, no association may require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board.
HB 2274 SB 1255	Marshall, III DeSteph, Jr.	Provides that unless expressly authorized by the Condominium Act or the condominium instruments or as otherwise provided by law, no unit

		owners' association may require the use of any for sale sign that is a unit owners' association sign, or a real estate sign that does not comply with the requirements of the Real Estate Board.
HB 1475	Orrock	Requires the Common Interest Community Board to include in its current one-page form that accompanies association disclosure packets that are required to be provided to all prospective purchasers of lots located within a development that is subject to the Virginia Property Owners' Association Act that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law.

Virginia Court Cases

A brief summary of some of the past years' most relevant cases follows.

- **Op. Va. Att’y Gen. 16-029** – Per the opinion, a restrictive covenant of the Brandermill planned community provided that property in a residential area may be used only for residential purposes. The covenant further stated that a home office that did not generate customer or client traffic would be considered residential. The Attorney General found that the “restrictive covenant identified in your request is reasonable, as it comports with the authority specifically granted to a POA under the Virginia Code to restrict uses to residential purposes, and it provides a reasonable exception by deeming an office that does not create customer or client traffic to and from the lot to be a residential use. Further, even when strictly construed, the covenant is non-ambiguous. ‘Residential’ is a clear and unambiguous term of common usage.” The Attorney General found the restrictive covenant enforceable as written.
- **Capitol Property Management Corporation v. Nationwide Property & Casualty Company** – E.D. Va Jun 5, 2017. Capitol Property Management (Capitol) was hired to manage a condominium association in 2013. The management company, among other responsibilities, was to file insurance claims for the association. It collected a 10% fee on claims and received a construction management fee of 5% for projects greater than \$20,000. After a fire that resulted in a \$2.5 million payment from an insurance company for property damage, Capitol requested its fee and was denied by the insurer. Capitol attempted to obtain the processing fee and the construction management fee and ultimately sued the insurer. The court found that the association’s decision to use the management company to process the claims did not cause those costs to fall under the policy therefore the insurer was not required to pay.
- **Kenneth M. Shepherd, et al. v. Rachele Conde, et al.** – Va. Apr 13, 2017. This case came about after a subdivision was created that contained six lots with a declaration that created an Architectural Control Committee responsible for enforcing the declaration. The declaration was amended several times and the defendants (Condes)

filed suit in the circuit court arguing that the amendments were improper. The first amendment stated the “association” was governed by the “HOA Act” and the second amendment “asserted that an association was created by the Declaration.” The circuit court found that the declaration did not qualify as a declaration under § 55-509 of the Property Owners’ Association Act; no association was created and only the defendants were bound by the amendments.

The case went to the Supreme Court which found that there was a duty to maintain the roads and an authority to impose assessments in the original declaration of the association. The Supreme Court also found that a two-thirds vote was sufficient to amend the declaration. It did not, however, find that an association had been created.

- **James Bodak v. Shar Mayne, et al.** – Va. Dec. 8, 2016.
A 47-lot subdivision contained three rights-of-way, one of which ran along one of the lots and down to a river. The owner of that lot gave notice to the association that he did not recognize the right-of-way and wanted all to cease using it. The case went to circuit court where the court found there was an easement and granted an injunction to the association, allowing it to continue using it. Upon appeal, the Supreme Court found that owners had purchased their homes in the community, knowing the right-of-way existed and that it was beneficial to all owners. The owners were claiming “private easements acquired when they obtained lots under the recorded plat.” The Supreme Court affirmed the Circuit Court’s opinion.
- **Martha A. Lambert v. Sea Oats Condominium Ass’n, Inc.** – Va. Apr. 13, 2017.
This Circuit Court case was included as part of last year’s Annual Report. Essentially, the prevailing owner in an association was awarded \$375 in attorney’s fees instead of the full \$9,568.50 she had incurred. The reasoning being that the case hinged on a \$500 judgment and the court did not want to have the attorney’s fees outweigh the judgment. The case went to the Supreme Court in April 2017 where it was remanded after being affirmed in part and reversed in part. The Supreme Court found that the lower court failed to consider seven factors when deciding upon the reasonableness of attorney’s fees and that the party seeking attorney’s fees is merely required to notify the opposing party.
- **Forest Lakes Community Association, et al. v. United Land Corporation of America, et al.** – Va., Feb. 16, 2017
Two property owners’ associations filed suit against owners and developers of a shopping center, because they believed that the sediment basins were discharging sediment that was making its way into the associations’ lake. The associations asserted trespass and nuisance actions against the shopping center owners and developers. The shopping center responded by asserting that claims by the associations were barred by the applicable five-year statute of limitations. The Circuit Court found that the discharge had been occurring “for more than five years prior to the suit being filed” and agreed with the statute of limitations argument presented by the defendants, and the Supreme Court affirmed.

Federal Developments

Very little federal activity related to common interest communities has occurred this year. The following have either been proposed or are in effect at the Congressional level.

- **Disaster Assistance Equity Act of 2017 (H.R. 3238)** – This bill would help associations to be recognized as providing essential services to the general public and thus allow associations to receive financial assistance under FEMA. The assistance would be for the purpose of debris removal and clean up after a disaster.
- **Disaster Assistance Support for Communities and Homeowners Act of 2017 (H.R. 1684)** – This legislation would require the Administrator of FEMA to “provide technical assistance to a common interest community that provides essential services of a governmental nature on actions that a common interest community may take in order to be eligible to receive reimbursement from a grantee that receives funds from the Agency for certain activities performed after an event that results in a disaster declaration.” The bill passed the House of Representatives and has been referred to the Committee on Homeland Security and Government Affairs.
- **Amateur Radio Parity Act (H.R. 555/S. 1534)** – This bill has been read twice and referred to the Committee on Commerce, Science and Transportation. This bill would deny community associations the right to restrict owners from erecting and maintaining amateur station antennas in the community.

NEWS OF INTEREST

Ombudsman Programs Across the Country

States continue to review and consider legislation for ombudsman programs or similar frameworks to help resolve community association complaints and concerns. Some of the pending legislation is as follows:

- **FLORIDA** – HB 625 establishes Office of Community Association Hearings; transfers powers & responsibilities of arbitrators to community association hearing officers; authorizes community association hearing officers to hold hearings & impose sanctions; revises & provides requirements for alternative dispute resolution for homeowners' associations. *This legislation is currently in Commerce Committee.*
- **HAWAII** – Numerous bills were presented that recommended establishing an Office of Condominium Complaints, a Condominium Dispute Resolution Commission, a legislative bureau to study the feasibility of establishing a Condominium Ombudsman, and a condominium unit owner hotline to provide legal information. *These bills were either referred to committee or deferred.*

- **MASSACHUSETTS** – HB 669 Establishes an Office of the Condominium Ombudsman under the Office of the Attorney General to investigate and resolve condominium complaints. *Hearing held in October 2017.*
- **NEW YORK** – SB 5839, the “Cooperative and Condominium Ombudsman Act,” would create an office of the cooperative and condominium ombudsman among other actions. *Referred to finance committee.*
- **PENNSYLVANIA** – HB 432 would amend existing legislation and provide general provisions relating to condominiums, cooperatives and planned communities, providing for complaints filed with Bureau of Consumer Protection. *Referred to Urban Affairs.*
- **SOUTH CAROLINA** – Three bills would include more authority by magistrates so that they would have jurisdiction over certain owner/homeowners association issues; adding a new chapter to the Code of Law entitled “Homeowners Associations” which would primarily address disclosure issues, records access, and meeting notice; and finally to add a chapter to the Code that would create the “Office of the Homeowners Association Ombudsman” in the Department of Consumer Affairs. *These three bills were referred to committee and subcommittee.*

Media Reports

The Ombudsman tracks articles related to common interest communities to stay abreast of issues and concerns that may impact the Office or are generally noteworthy due to their subject matter.

Following are recent items gleaned from media reports which may be of interest to stakeholders.

- Lake Arrowhead Homeowners Association, which was dissolved in 2003, will be paying a portion of the costs associated with the repair of two dams in its neighborhood. The estimate to repair the dams is \$700,000 and the county government has offered to pay a substantial portion. The remainder will be paid by money left by the Association. Without the repairs, two existing lakes would likely be drained and roads that run on top of the dams would no longer be viable; those roads help connect the community.
- Exeter Homeowners’ Association in Leesburg has filed suit in an effort to force the town to be responsible for the stormwater management dam located in the association. The association argues that the responsibility for dam repairs falls on the town, based on a plat and deed of easement previously recorded. An estimate for the cost of needed repairs was close to \$1,000,000 and additional costs would be required annually. The first hearing on this matter was held in November 2017.
- In Alexandria, the Huntington Club Condominium Unit Owners’ Association was terminated as a result of a vote of the owners. The purpose for termination was to redevelop the property from a 364-unit condominium to a 1,000-unit condominium with an additional 500 apartments, 65 townhomes, and 500,000 square feet of office and retail

space. According to Cameron Carey of Patch.com, this is “the first instance in the country in which a condominium association had voted to terminate itself for the purpose of redevelopment...” This decision came about due to the age of the condominium and its proximity to the Huntington Metro.

- A bite from a poisonous snake cost a condominium association \$23,000 and caused the victim to suffer nightmares as a result, after a visit to the emergency room and news that she would no longer be able to dance for at least two years. The condominium association had received prior complaints about snakes in the area but had taken no action, nor did it notify owners of the ongoing problem.
- The Treasurer of a homeowners’ association received a call from the Unclaimed Property division of the Virginia Department of Treasury. The Treasurer learned that there was a six-figure amount of money being held that no one knew about. There was no record in the association books indicating the funds existed and the Treasurer stated that more than 10 years ago a treasurer for the association had put stocks and CDs in a safe deposit box and then moved without telling anyone about the safe deposit box. The association was able to reduce its assessment as a result of the find, and it also added the newfound wealth to its capital fund.

STATUTORY AUTHORITY

Code of Virginia

Title 55. Property and Conveyances

Chapter 29. Common Interest Community Management Information Fund

§ 55-530. Powers of the Board; Common interest community ombudsman; final adverse decisions.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by § 54.1-2349 and this chapter.

B. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in the performance of its duties under this chapter. The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the balance from the moneys collected annually in the fund.

C. The Office of the Common Interest Community Ombudsman shall:

1. Assist members in understanding their rights and the processes available to them according to the laws and regulations governing common interest communities;
2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
3. Provide to members and other citizens information concerning common interest communities upon request;
4. Make available, either separately or through an existing Internet website utilized by the Director, information as set forth in subdivision 3 and such additional information as may be deemed appropriate;
5. Receive the notices of final adverse decisions;
6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested, notices of final adverse decisions received, any actions taken, and the disposition of each such matter;
7. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and

private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

8. Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries;

9. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

10. Monitor changes in federal and state laws relating to common interest communities;

11. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

12. Carry out activities as the Board determines to be appropriate.

D. The Board may use the remainder of the interest earned on the balance of the fund and of the moneys collected annually and deposited in the fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

E. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include but not be limited to the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and

telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mail address of the Office of the Common Interest Community Ombudsman. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

F. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

G. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

H. The Board shall issue a certificate of filing to each association which has properly filed in accordance with this title. The certificate shall include the date of registration and a unique registration number assigned by the Board.

I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.