

**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 2015-2016



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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, 2015, through November 25, 2016.

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TABLE OF CONTENTS

Executive Summary	1
Ombudsman Regulations & Role of Office	1
Office Activities	2
Complaint Statistics	2
Regulatory Action.....	4
Compliance & Enforcement.....	4
Ombudsman Determinations.....	6
Time-Shares.....	7
Education & Outreach.....	8
HB 1632 Stakeholder Committee.....	9
Constituent Expectations	9
Legal Developments	11
State Legislation.....	11
Virginia Court Cases	12
Federal Topics	13
News of Interest	14
Ombudsman Programs Across the Country.....	15
Media Reports	16
Appendix: Statutory Authority	17

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, 2015, through November 25, 2016.**

Although the Ombudsman Regulations (“Regulations”) became effective more than four years ago, we continue to receive a sizable number of complaints related to associations that have failed to adopt an internal complaint process. Fortunately, only in rare instances has the Office been unable to obtain compliance with these associations and assist them in implementing the required complaint procedure.

The submission of reviewable Notices of Final Adverse Decision (NFAD) improved during this reporting period, with 83% of NFADs submitted this year deemed appropriate for the internal association complaint procedure—a substantial improvement over last year when only 66% were found eligible for review. In addition, the overall number of NFADs received by this Office increased by 21% over the prior year. Determinations issued in response to NFADs are published periodically at <http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations/>.

In our ongoing efforts to reach out to individuals and groups that work with community associations and seek to better understand them, the Ombudsman provided outreach to a number of Realtors® Associations around the Commonwealth this past year. We continue to make every effort to be responsive to anyone who contacts the Office, whether by phone, regular mail, email, via elected officials, or any other form of inquiry.

OMBUDSMAN REGULATIONS & ROLE OF OFFICE

The Common Interest Community Ombudsman Regulations (18VAC48-70)—effective July 1, 2012—required existing community associations to establish an internal complaint procedure within a 90-day grace period (by September 28, 2012). Newly-formed associations or those not currently registered with the CICB must adopt a complaint procedure within three months of registration. 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 Board 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 obtained 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).

Moreover, 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

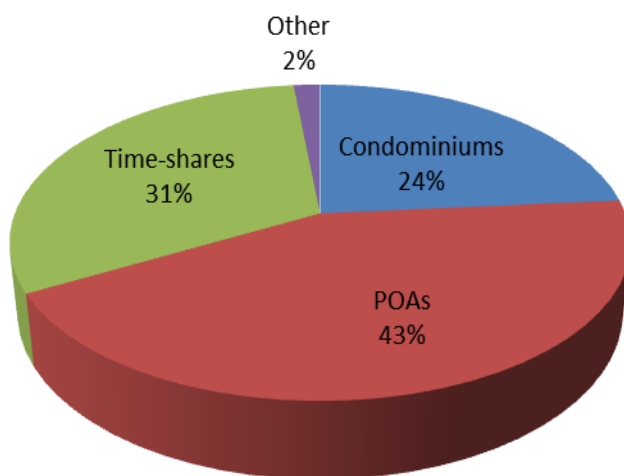
During the 2015-16 reporting period, the Office responded to 1,602 telephone calls and 2,238 email messages (generally within one business day, barring exceptional circumstances). Although the raw number of inquiries remained steady when compared with the prior year, in qualitative terms the constituency’s concerns are increasingly complex, thus taking more time to resolve, either by phone or email.

The Office received a total of 182 complaints (including NFADs) during the 2015-16 reporting period in the following areas:

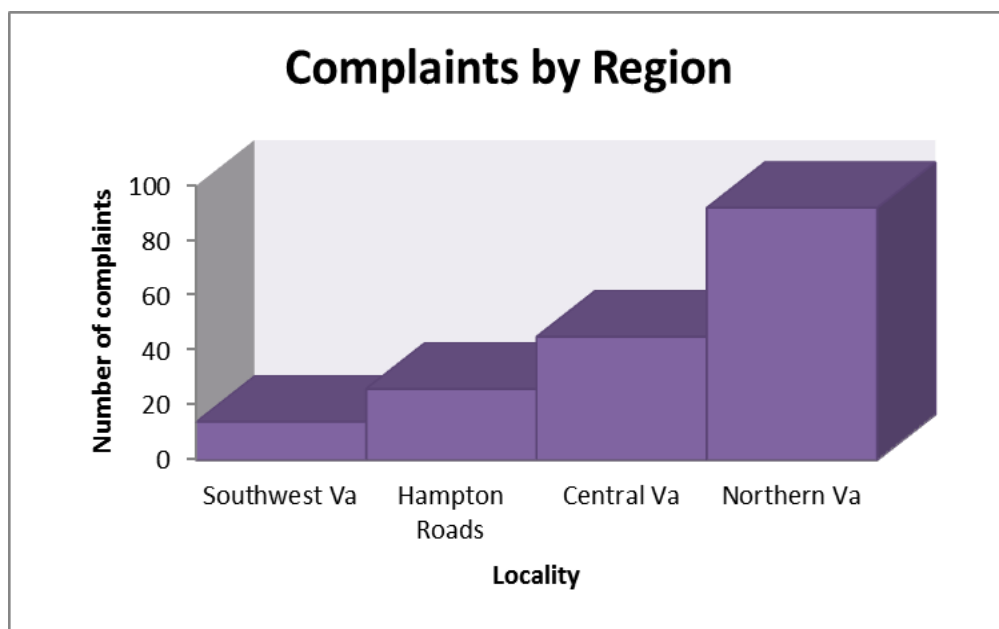
- 43% related to Property Owners’ Associations;
- 24% related to Condominium Unit Owners’ Associations;
- 31% related to Time-Shares; and
- 2% “Other” (e.g., Cooperatives, CIC Managers, etc.)

Property Owners’ Association complaints remain the most frequently received complaints, followed by Time-Share complaints and then Condominium complaints. The Office received only one complaint related to Cooperatives this year (categorized under “Other”), and in an unusual and misdirected filing, we even received a complaint about a local park. Complaint volume by category is virtually unchanged from prior reporting periods, which may be indicative of a general pattern reflecting the actual number of Property Owners’ Associations, Condominiums, Time-Shares and Cooperatives in the Commonwealth.

Total Complaints 2015-2016



The Office closed 175 complaints during the 2015-16 reporting period, a substantial number of which involved either an association's failure to *adopt* an internal complaint procedure or a failure to *respond* to a complaint submitted through that procedure. The good news is that the number of complaints related to a failure to adopt a complaint procedure decreased from the prior year; the flip side is that this Office received an increase in complaints indicating associations had failed to respond to complaints submitted through internal procedures in a timely manner.



In many instances such failures to respond involve owners who expect very immediate results from their association, as well as boards of directors that do not fully realize that, at a minimum, they must acknowledge receipt of a complaint within seven days, and preferably work toward scheduling consideration of that complaint shortly thereafter.

Regulatory Action

In response to an emerging pattern related to associations that had failed to adopt a complaint process and were also not registered with the CICB, but should be, the Ombudsman identified an amendment to the Regulations to promote compliance by these associations in a timely manner.

As initially adopted, the Ombudsman Regulations provided that associations not previously registered with the CICB would be granted 90 days from the date their registration was filed to adopt an internal complaint procedure. The Regulations allowed for this based on an assumption that associations that *should* be registered with the CICB *were* in fact registered with the CICB. In practice, however, this proved not always to be the case—resulting in associations that may have been out of compliance with the registration requirement for years being given an additional 90 days to adopt a complaint procedure when they finally do register with the CICB. This is unfair to those who live in an established, but unregistered, association and who wish to exercise their right to file a complaint.

At the suggestion of the Ombudsman, the CICB initiated regulatory action to rectify this unintended consequence. An amendment to the Ombudsman Regulations, to require associations that failed to register in the required timeframe to certify that they have adopted a complaint procedure at the time of filing their registration with the CICB, completed the proposed stage just prior to the end of this reporting period on November 11, 2016.

Compliance & Enforcement

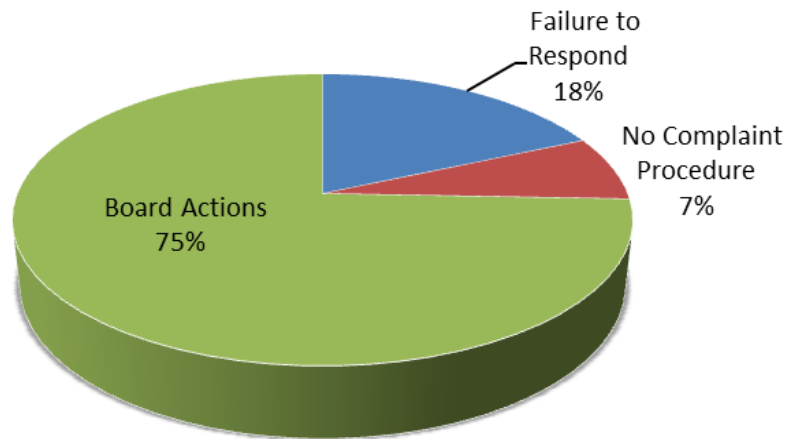
The Office has continued to be successful in resolving most complaints related to associations' internal complaint processes by helping owners, association board members, and other parties understand the laws and regulations. In addition, when the Ombudsman issues a Determination in response to an eligible NFAD submitted to this Office, more often than not the association promptly comes into compliance with common interest community law or regulation when applicable.

Nonetheless, despite our best efforts, in those relatively few instances when an association fails to come into compliance, this Ombudsman must refer the matter for enforcement by the CICB. This year the CICB entered into two Consent Orders as a result of referrals from this Office. One case concerned an association that refused to adopt the required complaint procedure (File 2015-03107). The other case involved both an association and its licensed manager, subjects of a complaint and subsequent NFAD related to pesticide spraying, in violation of Condominium Act requirements for prior notice to owners (File 2016-02684).

Associations and the members who live in them do appear to have a better understanding of the complaint process, but this Office continues to provide ongoing counsel to both owners and

boards of directors in order to help them properly apply the Regulations and correctly utilize their complaint procedures. For example, owners continue to submit complaints directly to the Ombudsman, rather than through their association complaint process. Although ineligible for formal review, a response is provided to the complainant with applicable further guidance when possible. We also continue to receive, but on a lesser scale than in prior years, NFADs related to topics other than common interest community law or regulations, and are therefore inappropriate for consideration by this Office.

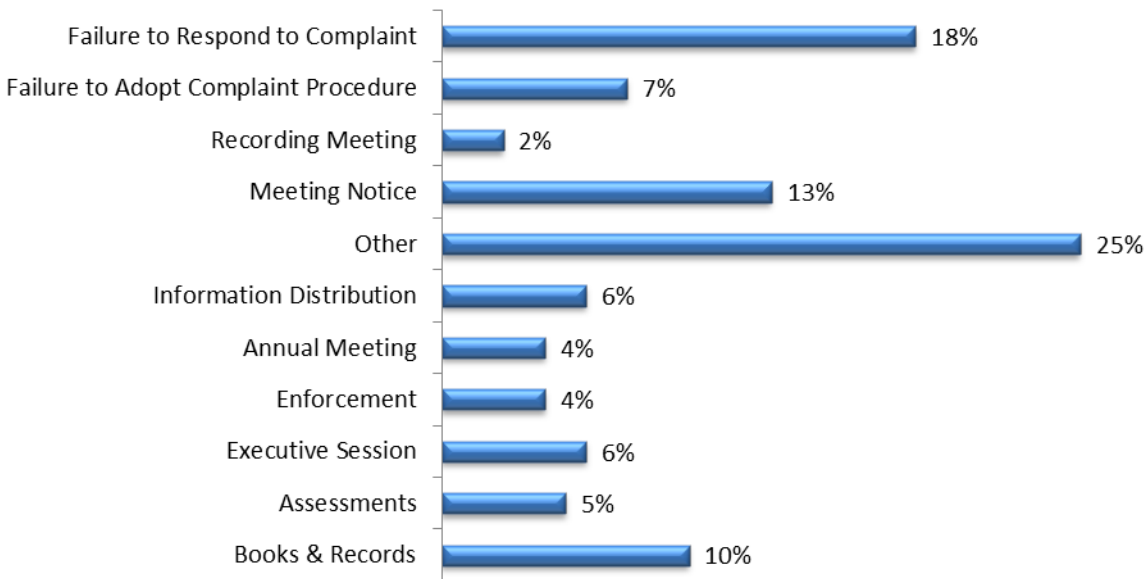
CIC Complaints by Category



As is expected, and has been the case historically, the vast majority of complaints received (including NFADs) are related to actions by association boards of directors. Of the complaints eligible for review by this Office during this reporting period, 25% involved internal complaint processes and either a failure to adopt a complaint procedure or a failure to respond to a submitted complaint (down from 34% last year).

Three-quarters of the complaints received cover a broad spectrum of common interest community law topics, such as access to books and records; misuse of executive session; failure to provide a method of communication; failure to hold an annual meeting; and unwillingness to allow an owner to record a meeting.

Detailed CIC Complaint Breakdown



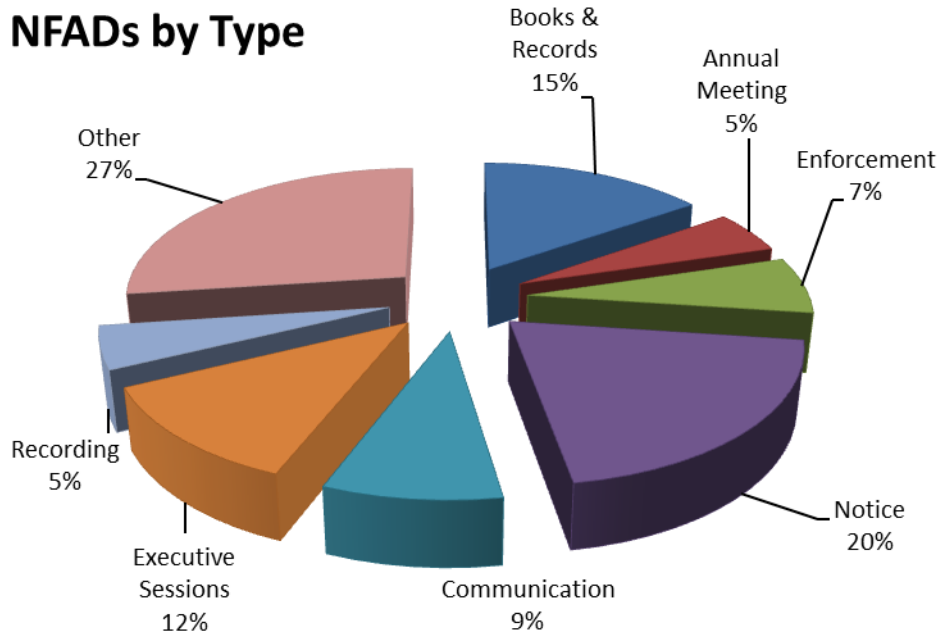
Ombudsman Determinations

During the 2015-16 reporting period, this Office received 20% more NFADs compared to the prior year. The issue of owners submitting NFADs unrelated to a violation under the jurisdiction of this Office is improving: 17% were not appropriate for the complaint procedure/NFAD process this year, as opposed to one-third last year. (These statistics do not account for submissions outside the required 30-day filing period and returned to the complainants.)

NFADs deemed ineligible covered a variety of topics such as elections, architectural violations, maintenance, improper appointment of committee members, and board member removal. The Office issued Determinations related to properly filed NFADs—those involving laws or regulations governing common interest communities—as follows:

- meeting notice (20%);
- access to books and records (15%);
- executive sessions (12%);
- communication (9%);
- enforcement (7%);
- annual meetings (5%); and
- recording (5%).

NFADs by Type



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 simply trying to research particular issues. The published Determinations are listed by association name and subject matter area at <http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations/>.

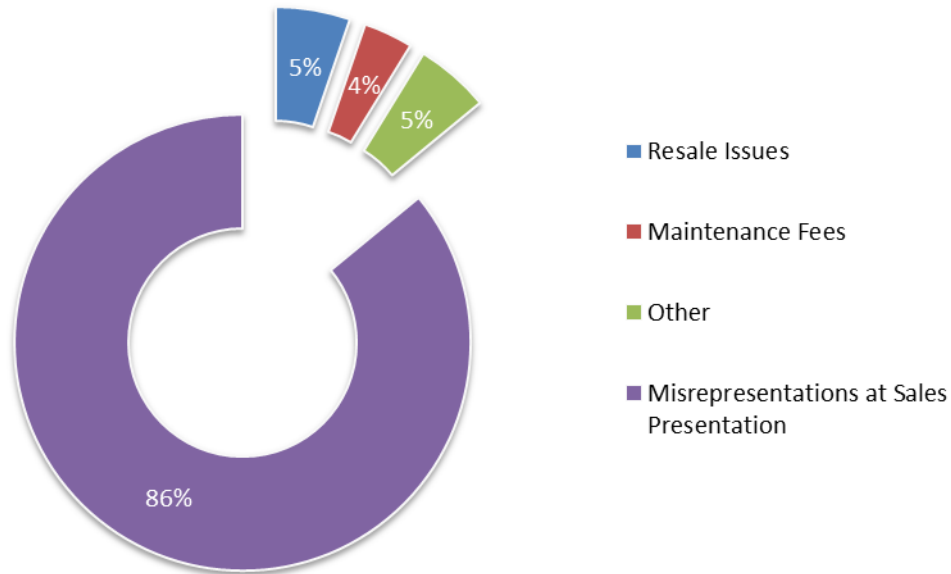
Time-Shares

Time-shares are not subject to the Ombudsman Regulations because they are not legally defined as common interest communities. As a result, individuals may submit complaints concerning time-shares directly to the Office (rather than going first through an internal association complaint procedure).

During the 2015-16 reporting period, the number of time-share complaints remained fairly steady as compared to the prior year. Also in accordance with historical trends, the primary subject matter of the complaints alleged sales presentation misrepresentations (86% this year vs. 80% last year).

CICB regulations providing regulatory oversight of time-share resellers became effective on March 1, 2016. As a result, this Office referred several complaints related to an unregistered time-share reseller to the agency's investigations section in order to assess whether there may be a potential violation of the new regulations. The complaints were received only a few weeks prior to the drafting of this report, however, so no outcome has yet been reached.

Time-Share Complaint Categories



EDUCATION & OUTREACH

The Office continued its outreach by working with local Realtors® associations, providing general presentations and attending trade shows and expos related to community associations.

The Ombudsman delivered five presentations during this reporting period; participated in numerous phone calls and conference calls with state and local elected officials; met with members of the General Assembly; served on the Common Interest Communities and Time-Share workgroups of the Housing Commission; and met with a representative from American Resort Development Association. Media coverage included an interview with a Richmond-area media outlet concerning a local association and concerns raised by owners; a profile of the Ombudsman in *Quorum*, the trade magazine of the Community Associations Institute (CAI) Washington-Metro chapter; and several write-ups in community association publications regarding some of the Determinations issued by the Ombudsman. In addition, the Ombudsman is participating on the Code Commission's Title 55 recodification workgroup.

The Ombudsman attended the CAI Annual Law Seminar in New Orleans this year, in order to interact with the professional colleagues in the field and to take advantage of the opportunity to learn more about community associations and the laws governing them. Because this seminar is always held in January, it is difficult to attend regularly due to the Ombudsman's responsibilities coinciding with the start of the General Assembly session at that time.

HB 1632 Stakeholder Committee

As noted in the 2014-15 Annual Report, the 2015 General Assembly enacted HB 1632, directing the CICB to “develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners’ Association Act (§ 55-508 et seq.)”

On December 10, 2015, the CICB adopted the Best Practices document crafted by the stakeholder committee. The document is now available on the CICB website at:

<http://www.dpor.virginia.gov/Boards/CIC-Board/>.

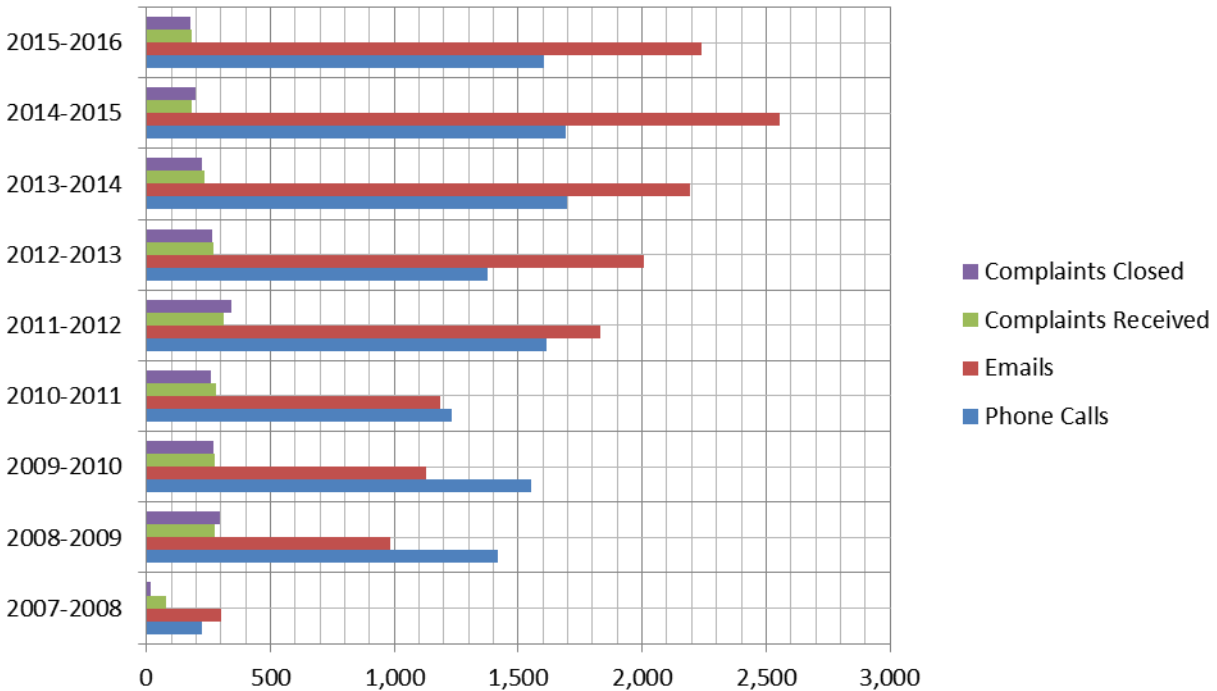
CONSTITUENT EXPECTATIONS

This is the first year since the Office’s inception that there has been a decrease in the number of phone calls and emails as compared to the prior year. The quantitative data does not provide an accurate reflection of the work accomplished, however, given the decrease was minimal and the Office continues to be staffed by one person (the Ombudsman). The subject matter of inquiries in phone calls and emails has become more complex, and many of the scenarios are continuing, meaning that one individual may call regarding numerous issues within his or her association. The public’s questions and concerns today demand a deeper understanding from the Office than do the more simple inquiries that have been more frequent in the past.

In addition to inquiries related to common interest communities, this Office also frequently fields questions on a range of housing-related topics including non-stock corporations, fair housing and discrimination, Federal Housing Administration (FHA) certification, and the Civil Relief Act. The Ombudsman is also contacted by other states that are considering the implementation of an ombudsman or regulatory program. Finally, the Office is an ongoing constituent service resource for state and local elected officials who are attempting to help resolve an issue related to an association, or are considering whether a legislative remedy is warranted. Although the Ombudsman cannot provide an opinion about proposed legislation, often even anecdotal information gleaned from the Office’s many inquiries over the years is of benefit to policymakers.

The Office does continue to hear resistance from associations that have not adopted a complaint procedure, usually expressed along the lines of: “We’re a small association, we can resolve these things on our own,” or “Our members can just call the board if they have a problem.” Whenever possible within time and resource constraints, the Office directs these associations to the statutory requirements and associated Regulations, and provides a review of the draft complaint procedure to ensure it comports with the regulatory requirements.

Ombudsman Office Activity 2008-2016



Thankfully, there have been few instances where an association has willfully failed to adopt a complaint procedure. In most cases, non-compliance is simply the result of a lack of knowledge about the requirement to adopt a complaint procedure, and most associations quickly address the matter and create a complaint procedure once they learn about the problem.

The same is true of the bulk of the Determinations issued by the Ombudsman. Generally, an association simply misunderstood the law, misapplied the law, or just was unaware the law even exists. Determinations help the association better understand their responsibilities, and also help owners maintain realistic expectations about their rights and responsibilities. Many Determinations find an association has not violated any provision of common interest community law or regulation, in fact, which tends to be educational for all parties.

LEGAL DEVELOPMENTS

State Legislation

Successful legislation from the 2016 General Assembly Session listed below.

Bill No.	Patron	Description
HB 234	Sullivan	Amends the Nonstock Corporation Act to establish a procedure allowing without a board meeting by fewer than all of the directors if authorized in the articles of incorporation. Although this legislation is not considered common interest community law, it will likely affect many associations.
HB 684	Peace	Amends the Condominium and Property Owners' Association Acts to prohibit associations from evicting tenants or charging rental fees unless expressly authorized by statute, and to require associations allow an owner's designated real estate agent to act as their legal representative for leasing purposes. The bill also amends language concerning disclosure document provisions.
HB 1101	Villanueva	Amends the Sex Offender and Crimes Against Minors Registry Act to allow associations to request and receive from the State Police notice about registered sex offenders in the same or contiguous zip codes as that of the common interest community. Although this legislation is not considered common interest community law, it may affect associations.
HB 1146 SB 389	Hope/ Surovell	Prohibits local governments from requiring consent from an association before issuing a building permit, business license, or other local permit, certificate, or license. Although this legislation is not considered common interest community law, it may affect associations.
HB 1264	Robinson	Adds language to the existing disclosure/disclaimer statement required to be provided in all residential real estate sales transactions. Prospective purchasers are advised to exercise due diligence with regard to any potential covenants or restrictions that may affect the subject property. Although this legislation is not considered common interest community law, it may affect associations.
SB 237	Petersen	Amends the Property Owners' Association Act's existing condemnation provisions to require valuation of common areas be calculated based on "highest and best use" as though it were free from restriction to sole use as a common area.

Virginia Court Cases

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

- **Op. Va. Att'y Gen. 15-073** – An inquiry into the right of an association to deactivate an owner's "barcode decal" for late payment of an assessment. The decal allows the owner to enter the community through a manned main gate and an unmanned gate at the rear of the community. Without the decal, access through the rear unmanned gate is no longer possible. The gates are separated by several miles. The Attorney General examined the rights and powers of an association, as well as the cautionary words contained in the Property Owners' Association Act (Act) pertaining to the denial of services for non-payment. §55-513(B) of the Act specifically states that "such suspension shall not endanger the health, safety, or property of any owner." The question of special assessments was also examined, which if unpaid, can result in denial of access to all common areas of an association by the owner who has not paid. The only restriction is that "direct access to the member's lot over any road within the development which is a common area shall not be denied..."

Ultimately, the Attorney General determined that the right to bar access is a question of fact and thus not appropriate for an opinion. He further stated that [the resolution in question] may not be legally applied against any owner if deactivation of the owner's bar code for nonpayment of a regular assessment would endanger health, safety or property; or if deactivation for nonpayment of a special assessment under 55-514 would deny the owner "direct" access to his or her property..."

- **PTR Investments, Inc., et al. v St. Andrews Place Homes Association** – Norfolk Circuit Court. Several orders and actions resulted from this case. An Order of Judgment was entered in December 2015, where the Court found, among other things, that the Plaintiff had proven its right to inspect the books and records of the association, and that the association must fully comply with the request to do so. The Court found that the Board of Directors, "as agents of St. Andrews, exercised bad faith in refusing to provide the books and records requested by Plaintiffs, that such refusal was not reasonable, and that such refusal is in violation of the Virginia Nonstock Corporation Act."

Subsequent actions by the Court included a January 2016 Order for the Appointment of a Special Receiver and Temporarily Enjoining Defendant. The Order resulted from non-compliance with the December 2015 Order by the same court, contempt of court by the Defendants, and the necessity to appoint a Special Receiver due to the emergency nature of the situation. As of September 30, 2016, the costs associated with the Special Receiver had reached \$50,000, even with efforts by the Receiver to reduce those rates.

- **Kingsmill Community Services Association v. Kings-Mill United, Inc.** – The Supreme Court of Virginia heard this case December 10, 2015. The court decided that "the circuit court erred in sustaining demurrers to the complaint for declaratory judgment filed by appellant Kingsmill Community Services Association ("KSCA") against appellee Kings-

Mill United, Inc. (“KU”)...” The court reversed the judgment of the circuit court. The appeal was based, in part, on a belief that there was no “justiciable controversy” since KCSA’s “claims are based on speculative future events, the complaint seeks an advisory opinion, and thus no jurisdiction exists...” The court found that the complaint “meets the standard in setting forth the alleged ‘controversies’ . . .” and that the “allegations present a current controversy rather than a future or speculative one.”

Three decrees and dismissals resulted from the return to Circuit Court: the first was related to the makeup of the board of directors; the second to cumulative voting; and the third further addressed the allocation of voting rights of members.

- **Lambert v. Sea Oats Condominium Ass’n, Inc.** – Prevailing owner 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 the attorneys’ fees to outweigh the judgment. This case will go before the Supreme Court where it is hoped a decision will be made as to whether reasonable attorney’s fee can preclude an award greater than the judgment upon which the original litigation was based.
- **Tvardek, Jr., et al. v Powhatan Village Homeowners Ass’n, Inc.** – This Supreme Court case resulted from a Circuit Court case where the Tvardeks “challenged the validity of a 2008 amendment to the Powhatan Village Declaration of Protective Covenants and Restrictions...” The Association argued that the case was not filed within the required one-year statute of limitations set forth in §55-515.1(E) of the Property Owners’ Association (POA) Act. The Tvardeks responded that the amendment did not have the required certification, and therefore never became effective and thus the statute of limitations never commenced. Ultimately it was determined that the amendment was not valid, as the certification stated that the amendment had been “approved” by the required majority of owners, while the language of §55-515.1(E) requires “that the requisite majority of the lot owners signed the amendment or ratifications thereof.” The Supreme Court reversed the circuit court’s order and awarded attorneys’ fees to the prevailing party.
- **Hartman v. Carriage Court II Homeowners Ass’n, Inc.** – An owner in the association purchased a home in 2008, five years after a declaration had been recorded. At the time of recording, the association was not incorporated. The association incorporated in 2012 and bylaws were adopted by a majority of owners. The Hartmans brought suit to determine if the association: “(1) was a valid property owners’ association under the Property Owners’ Association Act (“POAA”); (2) had the authority to enforce any restrictive covenants in the Declaration; and (3) had the authority to assess any fees under the Declaration.” The trial court found the association to be a “valid homeowners association” and the Supreme Court found no reversible error in the Circuit Court’s judgment. The Hartmans argued in their appeal that the association “did not exist as a corporate entity at the time the Declaration was executed and recorded.” The Supreme Court found that §55-509 of the Property Owners Association Act does not require

incorporation of the association nor did it require that the “entity subject to the declaration exist prior to the recordation and execution of the declaration.” Instead, the entity “may be created contemporaneously . . .” Ultimately the court found that “the Declaration contemporaneously created Carriage Court as an unincorporated entity and established it as the property owners’ association for the development.”

Federal Topics

Recent statutory changes in effect or proposed at the Congressional level.

- **HOME (Helping Our Middle-Income Earners) Act | H.R. 4696** - Legislation that would amend the Internal Revenue Service Code and permit an income tax deduction for association assessments of up to \$5,000. This is intended to help homeowners who are negatively impacted by paying both property tax and association assessments.
- **Amateur Radio Parity Act | H.R. 1301, S.1685** - An amended bill titled “[a] Bill to direct the Federal Communications Commission to amend its rules so as to prohibit the application to amateur stations of certain private land use restrictions, and for other purposes” is making its way through congress with several hurdles ahead. Previously the bill had disallowed any private land use restriction related to amateur radio use, and would have required associations to make reasonable accommodations for radio equipment. The amendments seek to provide associations some opportunity to adopt and enforce reasonable rules related to amateur radio equipment in the community, among other things.
- **Disaster Assistance Equity Act of 2015 | H.R. 3863** - According to Congress.gov, “[t]his bill amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to modify the definition of “private nonprofit facility” to include any facilities (including roads, bridges, sewer systems, and other critical community infrastructure) owned or operated by a common interest community that provide essential services of a governmental nature.” Presently, these facilities are not included in the definition and therefore are ineligible for the assistance, both physical and financial, provided by FEMA in the event of a disaster.
- **S. Res 285 - 114th Congress** – Sponsored by Senator Tim Kaine, this resolution “recognizes the contributions of Robert E. Simon, Jr. in (1) founding Reston, Virginia: (2) setting a trend of vibrant urban development in Virginia: and (3) inspiring and empowering citizens across the United States.”

NEWS OF INTEREST

Ombudsman Programs Across the Country

Numerous states are considering legislation for a common interest community ombudsman or a similar framework to help resolve community association complaints and concerns.

ILLINOIS – HB 5812 established the Condominium and Common Interest Community Ombudsperson Act. Effective January 1, 2017, associations will be required to comply with requirements under the Act, including adopting a complaint procedure. By July 1, 2018, the State must appoint an Ombudsperson who will offer training and education to associations and those affiliated with them. And beginning July 1, 2019, unit owners can begin submitting complaints to the Ombudsperson.

MASSACHUSETTS – H.1110 establishes an Office of the Condominium Ombudsman, which will be located in the Office of the Attorney General. This legislation is currently pending; as of May 2016 it had accompanied a study order.

MINNESOTA – SF 339, HF 1959 seeks to establish an ombudsman for common interest communities. Both bills are in committee: the House bill was referred to Judiciary and the Senate bill to Civil Law and Data Practices.

NORTH CAROLINA – HB 731 would “establish a fidelity bond requirement for community associations and create the North Carolina Community Association Commission to regulate community associations and community association managers...” This bill was referred to the Committee on Finance.

NEW JERSEY – A 3813 would establish an office of the common interest community association ombudsman. This bill was introduced and referred to the Assembly Housing and Community Development Committee.

NEW YORK – AB 1855, SB 2832 both would create an office of the cooperative and condominium ombudsman as well as a fund for same. AB 1855 was referred to housing and SB 2832 was referred to finance.

SOUTH CAROLINA – H 4819 would create the office of the homeowners’ association ombudsman in the consumer affairs department. The office would be responsible for maintaining an association registry, assessing fees, and developing methods for receiving and resolving complaints. This bill has been referred to the Committee on Labor, Commerce and Industry.

WASHINGTON – HB 2423 would create “an office of the homeowners’ association ombudsperson within the Office of the Attorney General to resolve disputes and inform members, directors, and other interested parties of their legal rights and responsibilities concerning homeowners’ associations.

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.

- The River Towers Condominium in Alexandria had to evacuate one of its buildings after a column shifted in the structure and resulted in cracks, crumbling of bricks, and doors that would not open or close. This happened in early October 2016, and the residents of that building continue to be displaced. The association is working with the local government and engineers to make the building habitable. Building officials for Fairfax County have said it could be several months before owners can return to their units.
- River's Bend Homeowners Association in Chesterfield County recently saw its affiliated golf course close after it experienced a steady decline. It is unclear what will happen to the 150+ acres that comprised the course, but according to [RichmondBizSense.com](#), possibilities include selling the riverfront portion of the land to the Trust for Public Land or selling the land to a developer who could build homes on the property, since the acreage is zoned residential.
- Belmont Community Association, located in Ashburn, has chosen an alternative underbrush removal method for the community. The association had consulted with a forester who noted that they had invasive plants that might crowd out the existing trees in some of their small forest areas (designated "tree-save" per Loudoun County requirements). Rather than attack the invasive plants with herbicides, the association chose to hire goats to eat the plants and protect the trees. The association plans to continue to bring the goats back.
- Another flagpole issue arose, this time in Warrenton. An owner installed a flagpole on the common area of the Villas at the Ridges Condominium. Based on its condominium instruments, which do not allow anything to be placed on the common elements without prior approval by the board, the association asked the owner to remove the flagpole. The owner did not immediately remove the flagpole, but instead asked for an exception to the rule which was subsequently denied.
- Chinese/defective drywall has been in the news for years, and an owner at Harbor Walk Condominium was hit hard when her own home was built with such drywall and she ultimately had to abandon her unit to protect her health. According to an article by Kimberly Pierceall in the *Virginian-Pilot*, the owner was ultimately "picked to be the lead plaintiff in a federal class-action lawsuit." While the case is pending, the owner, who had not been living in her unit for years, was able to work with her association and the bank and transfer the unit to the bank, thus releasing her from the obligation of paying assessments for a unit she could not inhabit.

APPENDIX

§ 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. Expedient 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.