

**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 2017-2018



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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, 2017, through November 25, 2018.

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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, 2017, through November 25, 2018.**

The Office continues to work closely with associations brought to its attention for failing to adopt an internal complaint procedure. With assistance and guidance, those associations routinely come into compliance with Common Interest Community Ombudsman Regulations (“Regulations”) by adopting the complaint procedure required by common interest community law.

The Office forwarded several complaints for investigation or enforcement action this year. These referrals resulted either from repeat violations of common interest community law already addressed in a Determination stemming from a Notice of Final Adverse Decision (“NFAD”), or they were complaints more appropriately dealt with as allegations against a Common Interest Community Manager rather than an association. The Office receives numerous complaints against Common Interest Community Managers but in nearly all instances, the subject matter is actually related to the association and its board of directors, rather than the licensed manager.

The nature of common interest community complaints received by the Office changed significantly during this reporting period, with a substantial majority relating to examining or obtaining copies of an association’s books and records. This is a troubling pattern, as in most cases, this portion of the law is really very straightforward and associations should not have any difficulty adhering to the requirements set forth in the applicable statutes.

Overall, the fact that so few complaints are referred for investigation or enforcement is indicative of the Office’s success in reducing conflict, resolving disputes, and promoting positive outcomes in situations that are often highly adversarial and fraught with controversy.

OMBUDSMAN REGULATIONS & ROLE OF OFFICE

The Common Interest Community Ombudsman Regulations (18VAC48-70), enacted in 2012, require community associations to establish an internal complaint procedure. 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.

Notices of Final Adverse Decision (NFADs), as described in §55-530 and the Regulations, are appropriate after—and only after—a member or citizen submits a complaint to an association through the mandatory association complaint procedure. Complaints subject to review by the Ombudsman are restricted by law and regulation to allegations of violations of common interest community law or regulation.

Upon receipt of an eligible complaint from an association member or owner—meaning the complaint is appropriate for the complaint procedure and was submitted in accordance with the association’s complaint process—the association board is required to provide a final decision 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).

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 (either because it has not adopted a complaint process or because it is simply being nonresponsive), a complaint alleging either of these regulatory violations may be submitted directly to the Office using a form specific to that purpose. The Office will then follow up with the association to ensure that it adheres to the requirements for responding to complaints, adopting a complaint procedure, or making the complaint process readily available.

OFFICE ACTIVITIES

Complaint Statistics

During the 2017 -18 reporting period, the Office responded to 1,622 telephone calls and 2,598 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 increased slightly over the prior year, with a two percent increase in calls, and a 12 percent increase in emails. The complexity of inquiries appears to be increasing, and many of the emails and phone calls received by the Office require additional research or information in order to provide the guidance requested. This may also be due, in part, to the ongoing changes in the legislation that governs common interest communities and the complexities associated with certain portions of common interest community law.

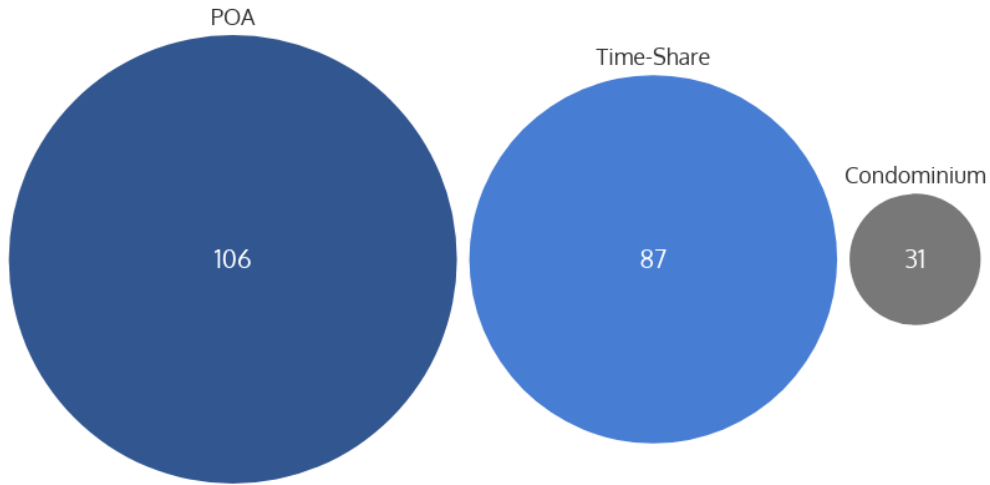
The Office received a total of 224 complaints¹ this year:

- 47% related to Property Owners’ Associations (POAs);
- 39% related to Time-Shares; and
- 14% related to Condominium Unit Owners’ Associations.

The Office received 35 *more* POA complaints this year over last year, the number of time-share complaints decreased by four, and condominium complaints decreased by twelve as compared to the prior year. Continuing with tradition, no complaints related to Cooperatives were received this year and any complaints received that were related to Common Interest Community Manager Regulations were referred to DPOR Complaint Analysis and Resolution (CAR) staff.

¹ As used in this Annual Report, the term “complaints” includes Notices of Final Adverse Decisions (NFADs); complaints related to an association failure to adopt a complaint procedure or respond to a submitted complaint; complaints against time-shares; and complaints that have been improperly submitted directly to the Office when they should have been submitted through an association’s internal complaint process.

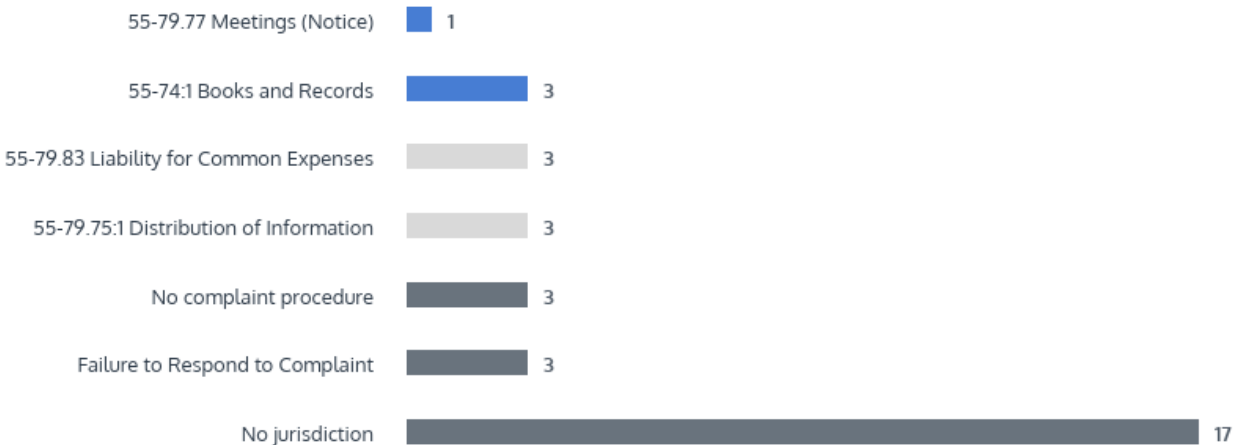
Total Complaints 2017-2018



Common interest community (POAs and condominiums) complaints far outpaced time-share complaints this year, making up 61 percent of the total number of complaints received. Time-share complaints accounted for the remaining 39 percent. The Office closed 230 complaints in 2017-18, a 13% increase over the prior year.

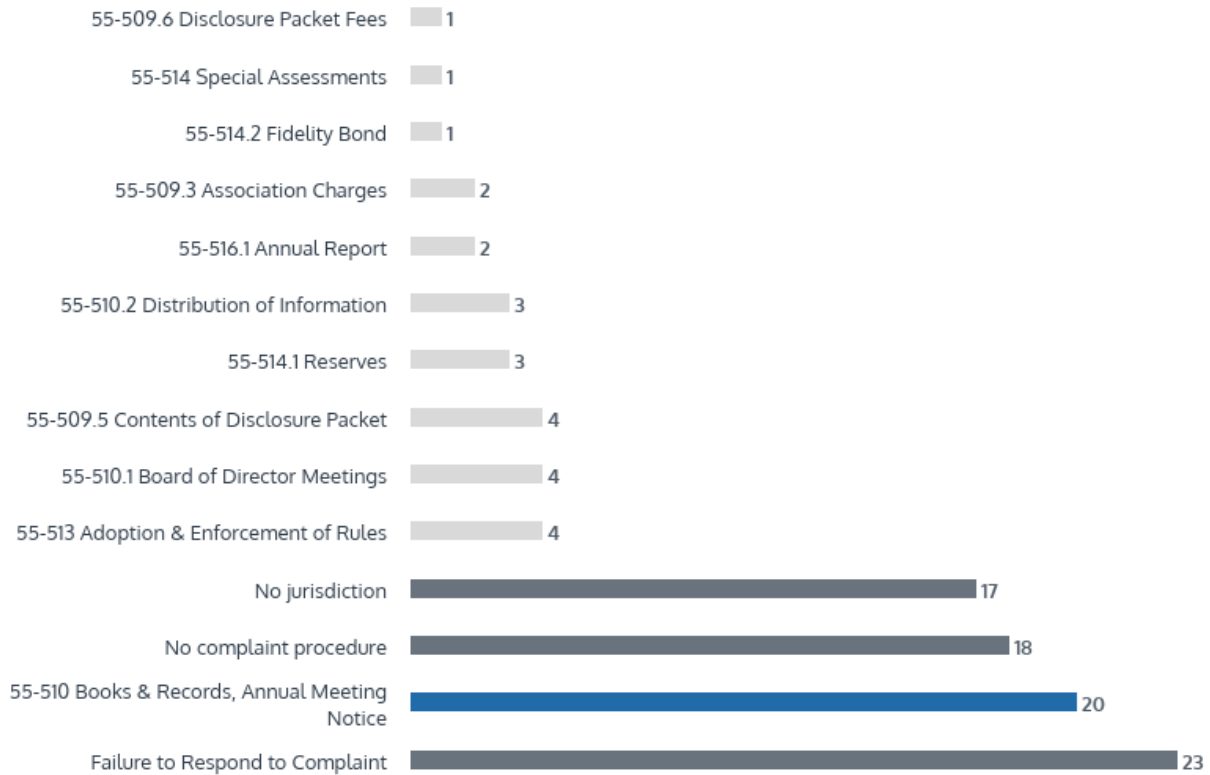
Condominiums and property owners' association complaints involved very different issues and concerns. More than half (52%) of the condominium complaints submitted were not appropriate for the complaint process because they did not allege violations of common interest community law. Of these improperly filed complaints, the bulk related to maintenance issues, water and mold problems that had not been resolved to the satisfaction of the owner, or noise and pet issues that continued unabated. The Office's only option when an owner is unable to resolve these types of complaints within the association is to suggest obtaining legal advice or counsel.

Condominium Complaints by Code Section



On the other hand, property owners’ association complaints related primarily (17%) to §55-510 of the POA Act (Access to Books and Records, Annual Meeting Notice), as well as failures on the part of an association either to adopt a complaint procedure (15%) or to respond to a complaint submitted through the complaint process (20%). While there were also significant numbers of POA complaints that did not fall under the jurisdiction of this Office (14%), the total percentage was far less than that of the condominium complaints (52%) that did not fall under our authority.

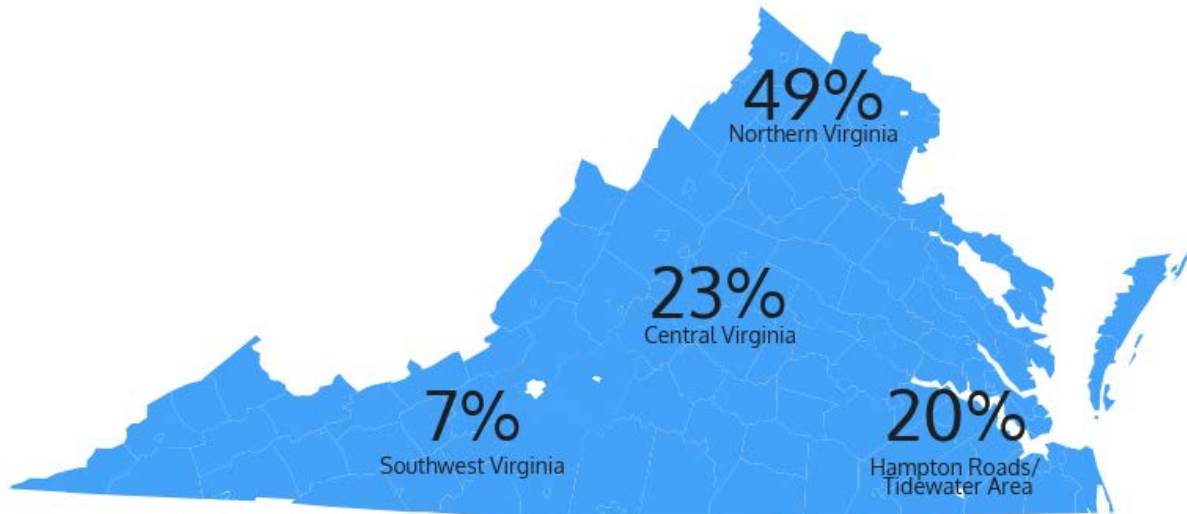
POA Complaints by Code Section



While there was a very small decrease in the number of time-share complaints this year (4), the nature of the complaints submitted remained virtually unchanged. As has been the case since this Office was first established, nearly all time-share complaints received alleged that a time-share buyer was provided misinformation, verbal in nature, at the time of the sales presentation.

The largest percentage of complaints received by this Office has always come from Northern Virginia, with Central Virginia and Tidewater/Hampton Roads nearly tied for second place. Southwest Virginia usually makes up only a small portion of the complaints received.

All Complaints by Location



Complaint Procedure

The requirement for an association complaint process has been in place since July 2012. Despite the lengthy passage of time, there are still associations that have failed to adopt a complaint procedure and therefore provide no method for complaint resolution with their community.

As noted previously, 15% of complaints related to property owners' associations allege a failure by the association to adopt a complaint procedure, while 20% of POA complaints allege that an association failed to respond to a complaint submitted through an established procedure. Condominiums struggle with the same problem but to a lesser degree, with only 9% of all submitted complaints related to a failure to adopt a complaint procedure and 9% related to a failure to respond to a submitted complaint.

The Office generally learns of an association's failure to adopt a complaint procedure in one of three ways:

- The association attempts to register with the CICB, which requires certification that complaint procedure is in place;
- The association is compiling disclosure documents for a sale of a lot or unit (disclosure statutes require that a complaint procedure be included in these documents); or
- An owner (or citizen) attempting to submit a complaint to the association learns that there is no complaint procedure or the request is simply ignored.

When this Office learns that an association has failed to adopt a complaint procedure, our goal is to reach out to the association, remind the association of its obligations under the law and regulations, and attempt to obtain compliance. The Office has no independent enforcement

authority and therefore must refer any cases where compliance cannot be obtained elsewhere in the agency. However, case referral is extraordinarily rare because the most common reason for an association failing to adopt a complaint procedure is because it was not aware that it was required to do so. This Office will provide guidance and information to facilitate the adoption of a complaint process, but only to the extent that it can do so without providing legal advice.

An association that fails to respond to a submitted complaint may do so for several different reasons. The complaint may not have been submitted in accordance with the association's complaint process; for example, it may have been handed to a board member when the complaint process specifically states that all complaints must be sent by certified mail to the association's manager at a specific address. Associations frequently fail to acknowledge receipt of a complaint within seven days, as required under the Regulations, but fully intend to provide consideration and a final decision on the complaint. And, associations often simply fail to be responsive either by choice or because they do not fully understand the regulatory and legal guidelines in place that require them to acknowledge and respond to submitted complaints. In any and all of these situations, once notified of the situation, the Office will contact the association, provide a timeframe for responding to the complaint, and make certain that compliance is obtained.

The mission of this Office, by statute and in practice, is to resolve conflict whenever possible. By working closely with associations and helping them come into compliance, especially as it pertains to the complaint process, we help to bring the complainant and the association closer together and achieve complaint resolution. Providing guidance and education in these situations, rather than immediately moving to some form of enforcement, takes a balanced approach and is appropriate considering the volunteer nature of association boards of directors. If the Office was to become too heavy handed, the difficulties that already exist when it comes to associations filling board positions would only be exacerbated. Moreover, by collaborating with associations to resolve issues, we also help lessen the financial costs associated with enforcement or investigation.

Some individuals do continue to submit complaints directly to the Office, rather than using their association complaint procedure. In these instances, the Ombudsman cannot provide a Determination because the complaints first must be routed through the 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.

As is obvious from the percentage of complaints received about a failure to adopt a complaint procedure and a failure to respond to a submitted complaint, the Ombudsman spends a sizable amount of her time working with associations to help bring them into compliance. This may mean numerous phone calls and emails, and reviews of draft complaint procedures, all of which can take many hours.

Complaints about a failure to respond in a reasonable timeframe are difficult, as the Regulations do not set out what constitutes a reasonable timeframe. Generally, this Office takes the approach of looking for forward movement on the complaint in question. Provided an association is

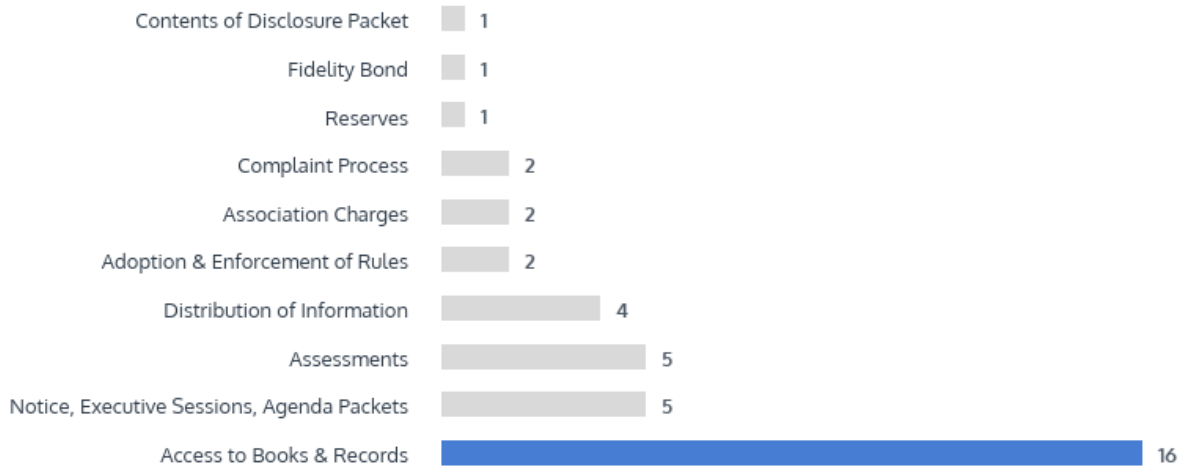
communicating with a complainant, acknowledging receipt of a complaint, and letting the complainant know when consideration will take place, the Office will usually find it reasonable and sufficient, unless consideration is delayed interminably with no valid reason for doing so.

Ombudsman Determinations

During the 2017-18 reporting period, the Office received 32 NFADs. While the subject matter of the NFADs did not differ dramatically from the prior year, the weight of the individual topics changed enormously.

Last year, for example, “Access to Books and Records” comprised 18% of the NFADs received, whereas this year the same topic made up 41% of the NFADs received. Other topics varied from last year and prior years, but not by nearly as much.

Notice of Final Adverse Decision (NFAD) by Subject



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

- Records Access (41%);
- Meeting Notice (13%);
- Assessments (13%)
- Distribution of Information (10%);
- Adoption and Enforcement of Rules (5%);
- Association Charges (5%); and
- Other (13%).

The Office faces difficulty with complainants failing to submit their NFAD within 30 days of the date of the association’s final decision. Because this deadline is statutory, we have no latitude to extend the deadline by even a day.

The Office also receives NFADs alleging violations of governing documents or statutes other than common interest community law. These complaints should not have been reviewed by an

association (they are ineligible as an association complaint) and should not be submitted as NFADs. Instead, the association can certainly review and respond to such complaints, but should do so outside of the association complaint process; thereby not creating an expectation that the ineligible complaint should be submitted as an NFAD to this Office.

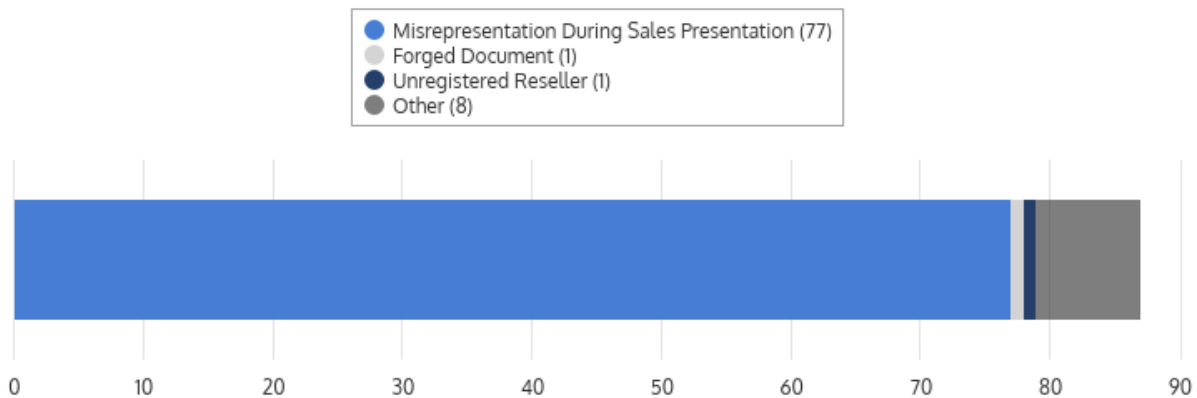
The Office continues to post Determinations issued by the Ombudsman as a resource for owners and citizens who may wish to file NFADs, or who are interested in learning more about similar issues. The published Determinations are listed by association name and subject matter area at <http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations>.

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.

The number of time-share complaints (87) decreased slightly over last year, with the vast majority alleging misrepresentations of information during the sales presentation, and that this inaccurate information led to the purchase of a time-share. This is an ongoing and unchanging aspect of time-share complaints.

Time-Share Complaints



As noted in previous years' reports, the difficulty with these allegations of misinformation is that there is no way for this Office or DPOR to substantiate such allegations. Without evidence of wrongdoing, we cannot support a full investigation into these matters, especially when a portion of them are related to time-shares purchased years ago.

Time-share purchasers do have a seven-day rescission period during which they can cancel the purchase agreement for any reason, as long as they do so in the allotted time and adhere to the statutory requirement that such cancellation be delivered either by hand or by certified mail, return receipt requested.

EDUCATION & OUTREACH

This year the Ombudsman participated in a Virginia Bar Association continuing legal education (CLE), modeled as a question-and-answer session that generated great interaction and information sharing. She again presented to a Norfolk law firm's clientele and attended several Community Association Institute (CAI) Expos and CA Days, both as a presenter and exhibitor. She also networked with other ombudsmen across the country, with additional conference calls planned for the future.

Overall, however, the Ombudsman did not provide as many presentations this year as in prior years. This is, in part, due to the nature of the Office. When first created, there was a tremendous need to explain the Office's purpose and ensure that people understood the boundaries of its jurisdiction. Once there was a clearer understanding of the role of the Office itself, clarifying the complaint procedure became a necessity, and associations throughout the Commonwealth needed guidance on the process and the Regulations that governed it. In more recent years, the need to explain the Office or the complaint process to large numbers of people has decreased and, instead, information is delivered on a person-to-person basis, via phone calls and emails.

The Ombudsman drafted several articles for *Common Interests*, the CICB newsletter, and had an article published in *Quorum*, the CAI Washington Metro Chapter's monthly magazine. She was accepted to the Virginia Commonwealth Management Institute and attended the week-long program in the spring of 2018.

The Ombudsman has continued to serve as a resource for DPOR, by providing guidance related to common interest communities and common interest community law when there are investigations or questions related to CIC Managers and community associations.

The Ombudsman continues to provide technical assistance and objective analysis for General Assembly members who are considering legislation and met with several legislators to provide general information about the Office and the types of complaints and issues that we address. Rather than providing opinions on legislation, she instead provides anecdotal information and acts as a sounding board to help legislators determine on their own whether there is a need for specific legislation. The Ombudsman is also a frequent party in conference calls related to community associations, usually when requested by localities, other agencies, or legislators.

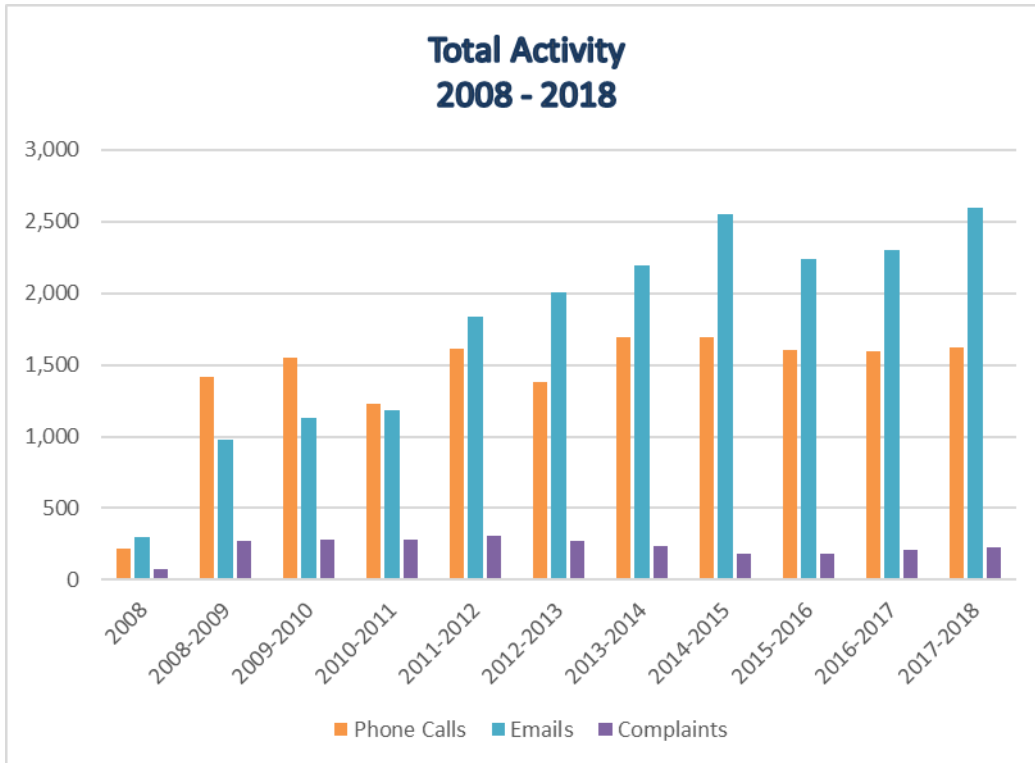
CONSTITUENT EXPECTATIONS

The nature and number of inquiries changed during the 2017-18 reporting period. The number of POA complaints increased dramatically, while condominium complaints decreased by a much smaller percentage. The nature of common interest community complaints also changed significantly, with a substantial majority of all complaints relating to examining or obtaining copies of the books and records of the association. This is a troubling pattern, as in most cases, this portion of the law is really very straightforward and associations should not have any difficulty adhering to the requirements set forth in the applicable statutes.

The Office continues to work with associations that have not adopted complaint procedures or have failed to respond to a submitted complaint. While more than six years has elapsed since the Regulations governing the association complaint process were enacted, many associations still simply have no idea that they must adopt a complaint procedure. And for those that have adopted one, some are often lackadaisical in their application and their adherence to the actual process. This Office works closely with associations to help them understand their responsibilities under the Regulations.

Associations do sometimes object to the complaint process on the grounds that it is too onerous, especially for small associations. These protestations generally stem from boards of directors that have not read the fairly straightforward Regulations governing the complaint process, and instead are making assumptions about the difficulty of adopting a complaint procedure.

On the other hand, the Office also receives feedback from owners who believe it should be more heavy-handed with associations that are not in compliance with the complaint procedure requirements or with common interest community law in general. However, associations are run by volunteer boards of directors comprised of individuals who are themselves neighbors and owners. This Office strives to obtain compliance through guidance and education, rather than immediately seek enforcement action or investigations on any possible violation of common interest community law, in order to avoid depleting the ranks of volunteer boards. Even more problems would arise if associations lose their leaders and the very necessary work of running an association falls by the wayside.



An ombudsman’s primary responsibility is to resolve conflict. If, instead, this Office creates adversarial or combative relationships with association boards of directors, it is highly unlikely those boards would seek its guidance. Given there are so few situations in which this Office has not been able to obtain compliance, attempting to impose more punitive measures against associations that appear to have violated common interest community laws or regulations would seem unreasonable.

Ultimately, according to its statutory mandate, this Office exists to assist anyone with questions or concerns related to common interest communities. By providing the guidance and education necessary to help owners understand their rights and responsibilities, and to assist boards of directors in understanding the application of common interest community law, this Office helps even the playing field and hopefully brings communities closer together.

LEGAL DEVELOPMENTS

State Legislation

Twenty-three bills with the potential to directly impact common interest communities were filed during the 2018 Session of the General Assembly; of those, eight passed.

Bill No.	Patron	Description
HB 674 SB 443	Davis Cosgrove	Provides that in lieu of escrowing deposits made in connection with the purchase or reservation of a time-share product a developer may obtain a corporate surety bond or letter of credit with the CICB where the time-share project consists of more than 25 units.
HB 923	Bulova	Requires the CICB to reconfigure the form that accompanies association disclosure packets and resale certificates. The bill also requires the CICB to provide potential purchasers with additional information regarding restrictive covenants.
HB 1031	Watts	Requires that as a prerequisite to charging any fees for the preparation of disclosure packets, associations must register with the CICB, file annual reports, and make annual assessment payments. Additionally, a professionally managed property owners' association must provide the disclosure packet electronically if so requested by the requester in order to charge fees.
HB 1205	Cline	Authorizes the board of directors of a nonstock corporation to determine that any meeting of members not be held at any place and instead be held remotely, if the articles of incorporation or bylaws do not require the meeting to be held at a place. <i>*This bill amends the Nonstock Corporation Act, which is not common interest community law. However, it may impact the manner in which association boards hold meetings.</i>

Bill No.	Patron	Description
HB 1533	Kory	Provides that the POA Act shall be applicable to any development established prior to the former Subdivided Land Sales Act (i) located in a county with an urban county executive form of government, (ii) containing 500 or more lots, (iii) each lot of which is located within the boundaries of a watershed improvement district established pursuant to Article 3 of Chapter 6 of Title 10.1, and (iv) each lot of which is subject to substantially similar deed restrictions.
SB 328	Dunnavant	Requires the CICB to include information specifying the period or length of declarant control period in its form that accompanies association disclosure packets. With a delayed effective date of July 1, 2019, the bill also requires, unless control of the association of the development has been transferred to the members, that the developer register the association with the CICB within 30 days after recordation of the declaration and file required reports thereafter.
SB 722	Surovell	Provides that books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure enumerated in the Condominium Act or POA Act applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion may be withheld, and all portions of the books and records that are not so excluded shall be disclosed at the requesting member's expense.

Virginia Court Cases

A brief summary of some of the past year's most relevant or interesting cases follows.

- **Daly v. Gulick Grp Inc.** – Fairfax Cir. Ct., May 11, 2018. Plaintiffs argued that their three-day right to rescind a contract after receiving a disclosure packet also extended to a requested update of the disclosure packet. Plaintiffs also noted that the original disclosure packet was missing material required under §55-509.5. The disclosure packet was received September 29, 2017 and the update was requested November 29, 2017. The court found that §55-509.4 does not provide for rescission of a contract based on an update, but instead only provides for rescission after receiving a disclosure packet. The court sustained the Defendant's Demurrer.
- **Rinker v. Oakton Condominium Unit Owners Ass'n** – Fairfax Cir. Ct., September 20, 2018. Plaintiff owns a condominium in the association and found it to be uninhabitable due to mold resulting from common element water leaks. Plaintiff alleged multiple causes of action, including a violation of the Condominium Act, and filed suit against her association. Association filed a Plea in Bar, believing that the case should be dismissed since Plaintiff did not join every owner in the condominium. This theory was based on the fact that all unit owners have an equal and undivided interest in the common

elements, per §55-79.55(a) of the Condominium Act. The court found that all owners need not be included since it is “the Association’s conduct as it relates to the common elements” that is at the root of the matter. The court will permit the case to move forward without all unit owners being joined.

- **Nolde Bakery Condo. Ass’n v. Nolde Bakery, LLC and Gadams v. Nolde Bakery Condo. Ass’n** – Supreme Court of Virginia, June 6, 2018. Appeal from the Richmond Circuit Court granted.
- **Ettinger v. Oyster Bay II Comty. Prop. Owners’ Assn’n.** – Supreme Court of Virginia, October 18, 2018. This case centered on ownership of land, and specifically whether the property line of a lot ended at the edge of a road or in the center of it. The deed conveying the lot included the square footage of the lot, a description of the lot that stated it was bounded by the road, and the subdivision plat. The Court found that the parcel extended to the center of the road since “nothing in the deed expresses a contrary intent” This decision was a reversal of the circuit court, which found that the lot extended only to the edge of the road.
- **Uplinger v. Alexandria Overlook Condo. Council of Co-Owners** – Supreme Court of Virginia, June 21, 2018. This case was a challenge to a demurrer granted in the Alexandria Circuit Court. The complaint contained three counts: one for breach of contract; one for breach of fiduciary duty; and one against the association’s law firm for aiding and abetting the breach of fiduciary duty. On appeal the Court found that the breach of fiduciary duty claim was improper since the plaintiff named the defendant (Alexandria Overlook Condominium Council of Co-Owners) as the perpetrator instead of the Board for the Council of Co-Owners. Because the breach of fiduciary duty claim was improper, the count against the law firm was also improper and could not survive. The Court did find that the first count, for breach of contract, was a proper cause of action. This claim was related to the plaintiff’s belief that the defendant “‘usurped the voting rights of the Co-Owners’ and constituted a breach of contract” when it incorporated the Council of Co-Owners without approval by the Co-Owners. The case was remanded to the Circuit Court.

Federal Developments

Following are bills that were recently introduced or were previously introduced and are still in committee or have been newly introduced. All may have an impact on community associations.

- **A bill to amend the Servicemembers Civil Relief Act to prohibit the enforcement of certain policies of homeowners’ associations regarding real property of servicemembers (H.R. 6911)** – This bill would prohibit a homeowners’ association from restricting the right to lease real property if the association member is a servicemember during a period of military service of the servicemember not less than 90 days.
 - *Introduced in September 2018 and referred to House Committee on Veterans’ Affairs.*

- **National Flood Insurance Program Extension Act of 2018 (S. 1182)** – This bill amends the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program through November 30, 2018.
 - *Introduced in July 2018 and became law.*
- **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 cleanup after a disaster.
 - *Introduced in July 2017; referred to Subcommittee on Economic Development, Public Buildings and Emergency Management, where it remains.*
- **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.
 - *Introduced in March 2017; passed House; received in the Senate and read twice before being referred to Committee on Homeland Security and Governmental Affairs, where it remains.*
- **Amateur Radio Parity Act (H.R. 555/S. 1534)** – This bill would deny community associations the right to restrict owners from erecting and maintaining amateur station antennas in the community. Before installing an antenna, however, an amateur radio licensee would be required to obtain prior approval. An association could prohibit installation of an antenna on common property and establish installation rules for amateur radio antennas and support structures.
 - *Introduced in January 2017; passed House; received in the Senate and read twice before being referred to Committee on Commerce, Science, and Transportation, where it remains.*
- **Fair and Equal Housing Act of 2017 (S. 1328)** - This bill amends the Fair Housing Act (FHA) under the Civil Rights Act of 1968 to add sexual orientation and gender identity as classes protected against discrimination in the sale, rental, or financing of housing. (Currently, the FHA prohibits housing discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin.)
 - *Introduced in June 2017, read twice and referred to Committee on Judiciary, where it remains.*
- **Housing Opportunity Through Modernization Act of 2016 (H.R. 3700)** This title amends the National Housing Act to require the FHA to modify its certification requirements for condominium mortgage insurance to make recertifications substantially

less burdensome than original certifications. The FHA must consider lengthening the time between certifications for approved properties and allowing information to be updated rather than resubmitted.

- *While H.R. 3700 became law in 2016, HUD has not published the final rules necessary to implement this Act, and more than 120 members of Congress have asked the Secretary to finalize the rules related to condominiums.*

NEWS OF INTEREST

Legislative Proposals Across the Country

States continue to review and consider legislation for ombudsman-type programs and regulation of community associations in order to help resolve complaints and concerns. The following proposals are of interest, but the list is by no means exhaustive.

- **FLORIDA** – HB 841 revises condominium association recordkeeping and financial reporting requirements; revises provisions relating to required association bylaws; revises board term limits; revises voting requirements relating to alterations and additions to certain common elements or association property; provides that an association may not prohibit a unit owner from installing an electronic vehicle charging station; provides when the installation of an electronic vehicle charging station may be the basis of a lien; revises requirements to serve as a board member; requires an association to follow certain procedures when amending a governing document, etc.
03/23/2018: Approved by Governor
- **HAWAII** – HB 1873 clarifies the process, including payment obligations, mediation requirements, and triggers for further default, where a condominium unit owner and association reach a payment plan to resolve a non-judicial foreclosure. Also establishes procedures that provide condominium owners with the right to submit disputed legal fees, penalties or fines, late fees, lien filing fees, or other charges, except for common expense assessments, to the mediation process prior to payment. Sunsets on June 30, 2020.
07/11/2018: Approved by Governor
- **HAWAII** – HB 1874 expands the scope of the Condominium Education Trust Fund to cover voluntary binding arbitration between interested parties; amends the conditions that mandate mediation and exceptions to mandatory mediation; and makes conforming amendments.
07/11/2018: Approved by Governor
- **MASSACHUSETTS** – HB 669 establishes an Office of the Condominium Ombudsman under the Office of the Attorney General to investigate and resolve condominium complaints.
03/15/2018: Referred to House Committee on Ways and Means

- **NEW JERSEY** – S 1624 establishes the Office of Common Interest Community Association Ombudsman.
02/05/2018: Referred to Senate Community and Urban Affairs Committee
- **NEW JERSEY** – S 2074 creates the Owners’ Rights and Obligations in Shared Ownership Communities Act.
03/05/2018: Referred to Senate Community and Urban Affairs Committee
- **NEW JERSEY** - A 2439 prohibits condominium associations from assessing insurance deductibles to individual unit owners or groups of unit owners.
02/01/2018: Referred to Assembly Housing and Community Development Committee
- **NEW JERSEY** - S 1781 places limit on liens filed by condominium associations for unpaid assessments on timeshares.
02/05/2018: Referred to Senate Commerce Committee
- **NEW YORK** – SB 5839 and AB 1109, the “Cooperative and Condominium Ombudsman Act,” create an office of the cooperative and condominium ombudsman, among other actions.
01/03/2018: Referred to Finance Committee
- **PENNSYLVANIA** – HB 595 provides definitions, management of condominiums, alternative dispute resolution for condominiums, complaints filing, and more.
05/04/2018: Approved by Governor
- **PENNSYLVANIA** - HB 1499 provides for contents of declarations in the creation, alternation, and termination of condominiums and provides for powers of unit owners’ association in management of the condominium, and more.
10/19/18: Approved by Governor

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.

Sinkholes have been showing up in the news; two associations in Virginia have been addressing these deep problems.

One owner in Spotsylvania found a sinkhole in his yard that has continued to grow since its initial appearance. Despite his best efforts, the owner has not been able to determine who should bear responsibility for the repair of the sinkhole and the corroded underground pipe that caused it. The owner has discussed the matter with his owners’ association, the county, and the Virginia Department of Transportation. None of the entities have taken responsibility for the problem and the owner faces a possible \$78,000 cost to repair the sinkhole.

Several holes in front of a Rosslyn condominium opened up and have been found to be caused by the storm drain system collapsing. The General Manager for the association stated in a newspaper article that the storm drain was more than 35 years old. The association, at the time of the article, was already planning its repair of the holes and addressing their underlying cause.

Golf courses also played a role in several articles related to community associations.

Brickshire Community Association in New Kent County purchased Brickshire Golf Club when the course was put up for sale last year. The association surrounds the golf course and determined that it would be in its best interest to make the purchase. According to an article on the “Mr. Williamsburg” website, the association was able to obtain more than the two-thirds approval needed to make the purchase.

Another golf course, this time in Roanoke County, has been purchased by a limited liability company created by the Hunting Hills Homeowners Association. The course was going to be sold and Hunting Hills residents banded together to find a way to purchase the course, which is part of a country club, and thus protect their community. While this was not a purchase made by the association itself, any owner who chose to purchase shares could do so.

Another golf course is awaiting its future. The course in Gainesville was closed last year and it is still not clear what will happen to the 67-acre course that sits in the middle of the Virginia Oaks Association. The course was designed by famous course designer Pete Dye and opened in 1999, but as interest in golf has waned, the course closed. While no follow up information has been available, the locality was considering turning the course into a nutrient bank in the form of a forest in order to meet the open space requirements that were part of a proffer.

In Other News . . .

A Loudoun County subdivision that was pursuing an owner for a violation of the association’s covenants, withdrew its allegations to take a closer look at the language of those covenants. The association and the owner were on the precipice of a legal suit at the time and the case was dismissed. The matter arose when an owner chose to cultivate a meadow that was part of his property. The failure to mow and maintain the meadow was seen by the association as being in conflict with the association rules that require mowing lawns and pruning and cutting trees and shrubbery.

Short-term rentals have been a regular component of the news these days, and the Ford’s Colony Homeowners’ Association has taken steps to address the problems that can arise when these rentals are not addressed in the governing documents of the association. The association had already passed a rule regarding short-term rentals that restricted rentals that were less than 90 days, but wanted to strengthen its position, if the membership so approved. Owners had the opportunity to vote on the matter, and according to the August edition of the association’s own magazine, “Talk of the Colony,” a majority vote of the membership to amend the declaration of protective covenants was obtained.

A Lake of the Woods finance manager has admitted to embezzling funds from the association. The theft was discovered in August 2018, and the total amount of money taken from the association was initially believed to be \$94,000. However, the Orange County Sheriff's Office subsequently found, after an investigation, that considerably more may have been stolen. According to a November 27, 2018, article in the *Culpeper Star-Exponent*, the amount stolen may be as much as \$400,000 and an arrest is likely once the investigation is complete.

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.