

# Common Interests

*The Newsletter of the Virginia Common Interest Community Board*

## Fall Tidings...



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### Disclaimer:

The information in this newsletter is intended to provide a summary of various updates and actions. It does not contain all information and should not be relied upon exclusively. Please contact the Board's office if you would like more information regarding the topics covered in this newsletter.

Welcome to the Fall 2019 edition of Common Interests, the newsletter for the Common Interest Community Board. This issue is packed with information and updates on the Board's recent activities. The spring and summer of 2019 were a busy and exciting time for the Board, as it worked to implement significant changes resulting from legislation passed by the General Assembly earlier this year. Among these was the elimination of the statutory requirement for registered common interest community associations and licensed common interest community managers to pay annual assessments to the Board. In many cases, this considerably reduced application costs to associations and licensees. News of this change was very well received by association members and managers alike. The Board also undertook a project to create guidelines for associations on the development of reserve studies for capital components. The guidelines were recently published and provide a resource for associations and managers. (See Page 2 for more on this.) In addition, the Board's office has been implementing the Recodification of Title 55 of the Code of Virginia, a subject that has been covered in this newsletter several times over the last few years. Implementation has included revisions to nearly all of the Board's regulations and many of its documents, including application forms and publications such as association disclosure packet notices.

It has been a time of change for the Board as well. The Board saw the departure of its longest serving member, Board Chair Pia Trigiani, after more than a decade on the Board. Ms. Trigiani, who had served as the Board's chair since the Board's inception in 2008, has provided steady leadership and guidance to the Board throughout her tenure and earned the admiration and respect of her fellow board members. I know Ms. Trigiani will be missed by her colleagues on the Board, as well as by staff at the Board's office who have the pleasure of working with her.

The Board also bid adieu to Board Members Paul Orlando, Vice-Chair of the Board since 2017, and

Beth Johnson, who had been a member of the Board since 2014.

This December, the Board welcomes its newest members appointed by Governor Ralph Northam. David Mercer, an attorney whose practice includes representing associations, replaces Ms. Trigiani; and Jim Foley, a common interest community manager, who replaces Mr. Orlando. The Board also welcomes back Board Member Scott Sterling, a developer of common interest communities, who has been reappointed to a second full term.

In light of the departure of both its Chair and Vice-Chair, the Board elected new leadership at the most recent meeting held on December 5. The Board, by acclamation, elected Board Member Drew Mulhare as Chair and David Mercer as Vice-Chair.

Beyond updates on comings and goings of Board members, this issue of the newsletter covers other recent developments as well, including an initiative from the Virginia Department of Game and Inland Fisheries allowing for urban archery season in common interest communities. (See Page 2.) We also have a special contribution from the Heather Gillespie, Common Interest Community Ombudsman, who shares her reflections on the past 10 years of "ombudsmanship." (See Page 8.)

As always, we hope you enjoy the newsletter. We would also love to hear from you about articles or topics that would be of interest. Send us an email at [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov) and let us know what you might like to read about in a future issue of the newsletter.

- Trisha Henshaw

Executive Director

Common Interest Community Board



## CIC Board Creates Guidelines for the Development of Reserve Studies for Capital Components

During the 2019 General Assembly, the legislature passed HB 2030 and SB 1538 which directed the Common Interest Community Board to "...develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study." In March 2019, the Board authorized the formation of a committee of experts to develop the guidelines. The Board appointed Board Member Drew Mulhare to chair the committee. Throughout the spring of 2019, staff for the Board, in coordination with Mr. Mulhare and Board Chair Pia Trigiani, assembled the committee membership and proceeded with drafting of a guidelines document for the committee's review.

The remaining membership of the committee was composed of representatives from the industry, including several reserve specialists, a Certified Public Accountant who works with common interest communities, and citizens who reside in common interest communities, including Board Member Tom Burrell. Ms. Trigiani served as an ex-officio member of the committee. (See adjacent table for additional information.)

On June 20, 2019, the Reserve Study Guidelines Committee convened at the Department. Prior to reviewing the draft document created by staff, the committee received comments from members of the public interested in the committee's work. Following the public comment period, committee members went to work reviewing the draft document. The committee discussed several matters related to the development of the guidelines. Items discussed included the proposed list of capital components included in the guidelines; making revisions to address communities that have very few common areas or common elements (such as those that may only have a main entrance and signage); and terminology used in the guidelines. There was considerable discussion regarding funding models for association reserves and which models may be more beneficial for associations. The committee directed staff to make revisions to the draft document, and publish it for public comment prior to review by the Board for final adoption.

On July 26, 2019, a revised draft guidelines document was published for public comment. The comment period lasted from July 26 until August 28. There were several comments from members of the public, including association members and common interest community managers.

On September 5, 2019, the Board met to review the proposed guidelines developed by the committee, and the public comments that had been received. The Board discussed several issues, including terminology used in the guidelines, the role of inflation in the development of reserve studies, types of funding models, and the readability of the guidelines. After reviewing the proposed guidelines and public comments, the Board directed further revisions to the guidelines be made, and voted to adopt the final guidelines as revised.

On September 16, 2019, the Guidelines for the Development of Reserve Studies for Capital Components was finalized and published. The following day, September 17, 2019, the guidelines were presented to the Common Interest Communities Workgroup of the Virginia Housing Commission. The guidelines were well-received by the workgroup.

A copy of the guidelines are available to public at the Board's website: <http://www.dpor.virginia.gov/Boards/CIC-Board/>.

Reserve Study Guidelines Committee Members	
Name	Role (Representation)
Drew Mulhare (Chairman)	Board Member (CIC Manager)
Michelle Baldry	Reserve Specialist
Tom Burrell	Board Member (Citizen)
Howard Goldklang	CPA
Eileen Greenberg	Citizen, Association Representative
Doug Greene	Reserve Specialist
Peter Miller	Reserve Specialist
Doug White	Reserve Specialist
Pia Trigiani (Ex-officio)	Board Member (Attorney)

## Board of Game and Inland Fisheries Permits CICs to Participate in Urban Archery Season for Deer Hunting

On May 30, 2019, the Board for Game and Inland Fisheries adopted a change to its regulations governing hunting of deer. The change permits a common interest community, as defined in the Code of Virginia, to apply to the Department of Game and Inland Fisheries ("DGIF") to receive approval to participate in urban archery season for antlerless deer. DGIF initiated urban archery season for deer in 2002 in order to reduce deer-human conflicts in urban areas while providing recreation for deer hunters. The urban archery season gives hunters one month before (September) and three months after (January - March) regular deer seasons during which only antlerless deer can be hunted using archery equipment or a slingbow. All cities and towns in the Commonwealth, and all counties with an average population density of 300 persons per square mile or more, are eligible to participate in urban archery season. According to DGIF, many residential communities, including CICs, with significant deer-human conflicts do not have access to the urban archery season because they are not located in a city or town or they are located in counties that do not meet the required population density threshold. However, residents of such communities experience deer impacts similar to cities and towns. DGIF initiated the rule change to help address this issue. The regulation change became effective on August 1, 2019. To participate in the season, an association must submit its request to participate to DGIF prior to July 1 and receive DGIF approval. Special urban archery season does not supersede any local ordinance, any restriction in an association's governing documents, or the requirement to obtain a landowner's permission to hunt.

For more information, please visit the website for DGIF (<https://www.dgif.virginia.gov/>).

## Regulatory Actions Update

### Regulatory Actions Completed:

#### **Association Fee Reduction (Effective July 1, 2019)**

In March 2015, the Board adopted a temporary reduction of filing fees for renewal of association registration. In 2017, the Board extended the temporary fee reduction to initial application for association registration. Currently, associations are required to pay a flat \$10 application fee for registering or renewing a registration. At its meeting on March 14, 2019, the Board voted to extend the temporarily reduced fees for another year, through June 30, 2020. An exempt action was filed on April 13, 2019, and published in the Virginia Register on May 13, 2019. The amendment became effective on July 1, 2019.

#### **Elimination of Annual Assessments (Effective July 1, 2019)**

At its March 14, 2019 meeting, the Board voted to undertake two exempt actions to amend the Common Interest Community Manager Regulations and Common Interest Community Management Information Fund Regulations to eliminate annual assessment payments as a requirement for manager licensure and association registration. The changes are the result of the passage of HB 2081 during the 2019 General Assembly Session. The exempt actions were filed on April 13, 2019, and published in the Virginia Register on May 13, 2019. The amendments became effective on July 1, 2019.

#### **Common Interest Community Manager Regulations - Title 55 Recodification (Effective November 1, 2019)**

At its June 6, 2019 meeting, the Board voted to undertake an exempt action to amend the Common Interest Community Manager Regulations to conform the regulations to changes in statute resulting from the recodification of Title 55 of the Code of Virginia to a new Title 55.1. The changes included updating citations of statute, elimination of an obsolete section of the regulations pertaining to provisional licensure of managers, and technical corrections. The exempt action was filed on September 10, 2019, and published in the Virginia Register on September 30, 2019. The amendment became effective on November 1, 2019.

#### **Common Interest Community Management Information Fund Regulations - Title 55 Recodification (Effective November 1, 2019)**

At its June 6, 2019 meeting, the Board voted to undertake an exempt action to amend the Common Interest Community Management Information Fund Regulations to conform the regulations changes in statute resulting from the recodification of Title 55 of the Code of Virginia to a new Title 55.1. The changes included updating citations of statute, and technical corrections. The exempt action was filed on September 10, 2019, and published in the Virginia Register on September 30, 2019. The amendment became effective on November 1, 2019.

#### **Common Interest Community Ombudsman Regulations - Title 55 Recodification (Effective December 11, 2019)**

At its June 6, 2019 meeting, the Board voted to undertake an exempt action to amend the Common Interest Community Ombudsman Regulations to conform the regulations to changes in statute resulting from the recodification of Title 55 of the Code of Virginia to a new Title 55.1. The changes included updating citations of statute, and technical corrections. The exempt action was filed on October 10, 2019, and published in the Virginia Register on November 11, 2019. The amendment became effective on December 11, 2019.

#### **Condominium Regulations - Title 55 Recodification (Effective December 31, 2019)**

At its June 6, 2019 meeting, the Board voted to undertake an exempt action to amend the Condominium Regulations to conform the regulations to changes in statute resulting from the recodification of Title 55 of the Code of Virginia to a new Title 55.1. The changes included updating citations of statute, and technical corrections. The exempt action was filed on October 17, 2019, and published in the Virginia Register on November 11, 2019. The amendment became effective on December 31, 2019.

#### **Time-Share Regulations - Title 55 Recodification (Effective December 30, 2019)**

At its June 6, 2019 meeting, the Board voted to undertake an exempt action to amend the Time-Share Regulations to conform the regulations to changes in statute resulting from the recodification of Title 55 of the Code of Virginia to a new Title 55.1. The changes included updating citations of statute, and technical corrections. The exempt action was filed on October 15, 2019, and published in the Virginia Register on November 11, 2019. The amendment became effective on December 30, 2019.

#### **Condominium Regulations - Periodic Review**

On May 17, 2019, an announcement of periodic review of the Condominium Regulations was filed with the Registrar of Regulations. On June 10, 2019, the periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on July 1, 2019. No comments were received during the comment period. On September 5, 2019, the Board voted to retain the regulation in its current form.



## Regulatory Actions Update (continued)

### Regulatory Actions In Progress:

#### Common Interest Community Management Information Fund Regulations - General Review

In March 2017, the Board initiated a general review of the Common Interest Community Management Information Fund Regulations. The scope of these regulations includes the registration and annual report requirements for community associations. The Board considered proposed amendments to the regulations at its November 2017 meeting. The Board voted to withdraw the action and restart the review to allow for additional public participation through formation of a regulatory review committee.

A regulatory review committee of the Board, consisting of selected Board members and other stakeholders, met on September 27, 2018, to discuss potential changes to the regulations. The committee reviewed and adopted proposed language for amendments to the regulations. At its November 29, 2018 meeting, the Board reviewed and accepted the proposed amendments. In February 2019, the proposed amendments were submitted for review by Executive Branch agencies. Executive Branch review was completed on September 19, 2019. The proposed stage was published in the Virginia Register on October 28, 2019 to commence a 60-day public comment period. A public hearing was held on November 12, 2019. The public comment period ended on December 27, 2019. More information on the public comment period for this action may be found at the Virginia Regulatory Town Hall website.

#### Public Participation Guidelines - Periodic Review

On September 6, 2019, an announcement of periodic review of the Public Participation Guidelines was filed with the Registrar of Regulations. On September 30, 2019, the periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on October 21, 2019. No comments were received during the comment period. On December 5, 2019, the Board voted to retain the regulation in its current form.

#### Time-Share Regulations - Periodic Review

On September 6, 2019, an announcement of periodic review of the Time-Share Regulations was filed with the Registrar of Regulations. On September 30, 2019, the periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on October 21, 2019. No comments were received during the comment period. On December 5, 2019, the Board voted to retain the regulation in its current form.

#### Common Interest Community Manager Regulations - Periodic Review

On September 6, 2019, an announcement of periodic review of the Common Interest Community Manager Regulations was filed with the Registrar of Regulations. On September 30, 2019, the

periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on October 21, 2019. One comment was received during the comment period. On December 5, 2019, the Board voted to retain the regulation in its current form.

#### Common Interest Community Management Information Fund Regulations - Periodic Review

On September 6, 2019, an announcement of periodic review of the Common Interest Community Management Information Fund Regulations was filed with the Registrar of Regulations. On September 30, 2019, the periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on October 21, 2019. No comments were received during the comment period. On December 5, 2019, the Board voted to retain the regulation in its current form.

#### Common Interest Community Ombudsman Regulations - Periodic Review

On September 6, 2019, an announcement of periodic review of the Common Interest Community Ombudsman Regulations was filed with the Registrar of Regulations. On September 30, 2019, the periodic review announcement was published in the Virginia Register to commence a 21-day comment period, which concluded on October 21, 2019. One comment was received during the comment period. On December 5, 2019, the Board voted to retain the regulation in its current form.

Further information on these regulatory actions may be found at the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov/>).

### Public Comment on Regulatory Actions

**The Board welcomes the public's participation in the regulatory process. Individuals may offer comment on pending regulatory actions, to include proposed regulations or regulation amendments, and proposed guidance documents or guidance document amendments. To sign up to receive notices regarding the Board's regulatory actions, including notification of public comment periods and to submit comments during a regulatory comment period, visit the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov>). In addition, public comments on regulatory actions may be submitted to the Board directly by mail or by email.**



## Recent Board Disciplinary Case Decisions

### File Number 2019-00076; Cardinal Management Group, Inc.

Consent Order adopted by the Board on June 6, 2019.

The management company was charged with violating the Board's prohibited act for failing to act in providing management services in a manner that safeguards the interests of the public (18 VAC 48-50-190.17).

The company, as managing agent for a condominium unit owners' association, failed to provide a complete condominium resale certificate to a purchaser as required by the terms of the company's management services agreement with the association.

The management company acknowledged its understanding of the charged regulatory violation, and neither admitted to, nor denied, the violation, but agreed to pay board costs in the amount of \$150. The management company also agreed to develop procedures for the preparation of resale documents to ensure all required attachments for disclosure packets and resale certificates were included as part of a disclosure packet or resale certificate. The management company further agreed to provide the Board with a copy of the procedure developed to ensure compliance as well as a sample disclosure document within 30 days of the effective date of the Board's order.

The terms of the order have been met.

### File Number 2019-00703; Purple Sage Cluster, Inc.

Consent Order adopted by the Board on June 6, 2019.

The property owners' association admitted to failing to provide written acknowledgment of receipt of a complaint filed with the association within seven (7) days, as required by the Common Interest Community Ombudsman Regulations (18 VAC 48-70-50.4). The association agreed to pay monetary penalties and board costs totaling \$400.

The terms of the order have been met.

### File Number 2019-00817; FirstService Residential DC Metro LLC

Consent Order adopted by the Board on September 5, 2019.

The management company admitted to five (5) violations of the Board's prohibited act for intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents (18 VAC 48-50-190.7). The management company was under contract to provide financial management services to its client, a property owners' association. The association terminated the contract. The termination was to take effect on December 31, 2017.

The management company's agreement with the association stipulated that in the case of termination, all sums due to the managing agent would be paid in full, provided that in the event of any disputes of bills or charges between the association and the management company, a joint escrow account would be established and funded with association funds until resolution of the dispute. The association did not dispute any of the management company's bills or charges. However, the management company withdrew \$20,000 of association funds from the association's operating account and placed the

funds into an escrow account to which the association did not have access.

The management agreement also stipulated the management company could withhold a reasonable amount of association funds, not to exceed \$1,000, to cover transition related costs such as copying and postage. However, the management company withheld association funds greater than \$1,000 for transition related costs.

The management agreement also provided the management company prepare a final detailed accounting of association funds as of the contract termination date, and remit any remaining association funds to the association no later than 60 days after the contract termination date. However, the management company failed to comply with these terms of the contract.

The management agreement further provided the management company would deposit all funds collected from owners within one week of receipt. However, several payments received by the management company in November 2017 and December 2017 were not deposited within the required timeframe.

The management company agreed to pay monetary penalties and costs to the Board totaling \$3,900. The management company also agreed to probation for a term of 60 days from the effective date of the order. During probation, the management company agreed to provide written certification to the Board, in a form acceptable to the Board, that it has (i) performed a review of all contracts, (ii) performed a review of transition protocol with its staff, and (iii) that it will perform a review of all contracts and review of transition protocol with its staff every year thereafter.

The terms of the order have been met.

## Recent Cease and Desist Actions

At its meeting held on June 6, 2019, the Board imposed a temporary cease and desist order against the declarant for the following condominium project registration due to non-compliance with the registration requirements in the Condominium Act. Under the terms of the orders, declarant must cease and desist from sales of condominium units until it comes into compliance.

### Harbor Heights Condominium

(Registration No. 0517050255)

Norfolk, VA

Declarant: Harbor Heights Residential, LC

Order adopted on June 6, 2019

(Compliance with Order Pending)

**You may refer to the Board's website for the most up-to-date information regarding active cease and desist orders.**

## Notable Recent Final Determinations from the Ombudsman

### File Number 2019-02371, Montclair Property Owners' Association

Determination issued on April 25, 2019.

The Complainant (Fagerholm) alleged multiple violations of the Property Owners' Association (POA) Act by the association, all of which relate an eminent domain taking of common area in the community. Fagerholm claimed the association failed to provide him and the other owners an opportunity to vote on an eminent domain taking of common area. The declaration for the community required a vote of the association's membership regarding any transfer of property to any public agency, authority, or utility. Fagerholm contended the failure to provide the opportunity to vote violated § 55-509.3:2 of the POA Act, which provides that every lot owner who is a member in good standing of a POA shall have the right to vote, in proportion to the owners' ownership interest, on any matter requiring a vote, except to the extent the declaration provides otherwise.

Fagerholm also claimed the association violated § 55-510.1 of the POA Act by failing to discuss issues related to the common area and eminent domain action in an open meeting, failing to have a recorded vote on the matter, and failing to provide any minutes on a vote. Fagerholm said he was under the impression the association's governing board had been in executive session prior to an open meeting in July 2017, but there was little or no information shared with members in the open meeting. Fagerholm also noted that in a September 2017 meeting, the association provided inaccurate information related to the costs of a possible adverse possession of the land at issue, and failed to discuss in any open meeting the taking of the parcel or how the association intended to resolve the issue of failing to value the parcel adequately.

Fagerholm further claimed the association violated § 55-516.2 of the POA Act by not obtaining a value for the common area that was based on its "highest as best use as though it were free from restriction to sole use as a common area." Fagerholm argued the association did not negotiate the valuation for the common area properly, and that it was under the mistaken belief it did not own the common area being considered for the taking, which resulted in the locality taking the land for \$100, even though the locality assessed the value of the land at more than \$80,000.

The association responded to Fagerholm's complaint by stating it did not accept the allegations of statutory violations.

The Ombudsman determined that she could not find there were violations of common interest community law. Of Fagerholm's three complaints, two were tied to the association's declaration, and, therefore, outside the scope of the authority of the Ombudsman's office. Regarding the alleged violation of § 55-509.3:2, the Ombudsman noted that, based on the information provided, the association's declaration may require a vote of the membership in the situation outlined in Fager-



holm's complaint, the Ombudsman's office has no authority to interpret governing documents of an association, including the declaration. As such, the Ombudsman could not provide a determination as to whether the association violated any provision of common interest community law by failing to provide the membership an opportunity to vote prior to transferring the land, since it is the declaration that requires a vote and the law does not define what specific situations require a vote by the membership.

Regarding the alleged violation of § 55-510.1, the Ombudsman noted there was not enough information provided to prove the association was holding a meeting or meetings without notice. The allegations were not specific enough, and there was no way to determine, based on the information presented, if a meeting was held without notice. Boards do make decisions outside of meetings, and depending on the governing documents of an association, may have the authority to do so. The Ombudsman added that while any failure to hold an open meeting may be troubling, a board taking action without a meeting is not necessarily in contravention of the law, depending on the governing documents of the association and its corporate status. In this case, there was no proof of a specific or particular meeting without notice.

As to Fagerholm's allegation of a violation of § 55-516.2, the Ombudsman noted the POA Act does not define "highest and best use as though it were free from restriction to sole use as a common area;" and the Ombudsman's office does not have the capacity to determine how to arrive at a proper value for a piece of land, and more particularly the piece of land at issue. Determining whether the association obtained a proper value would be outside the scope of the Ombudsman's authority, as it would require research and review of documents and information outside the bounds of the POA Act, and common interest community laws and regulations in general.

The Ombudsman determined no action was required of the association.

## Notable Recent Final Determinations from the Ombudsman (continued)

### File Number 2019-02545, Purple Sage Cluster Association

#### Determination issued on May 20, 2019

The Complainants (Sledzaus and Moran) alleged that their association violated § 55-510 of the Property Owners' Association (POA) Act by failing to provide copies of documents that Sledzaus and Moran had requested by email. Sledzaus and Moran noted the association did not provide the requested documents within five (5) business days, which they contended violated the POA Act. Sledzaus and Moran specifically requested a copy of a fire marshal's report and an underwriter's report. In its final decision to Sledzaus and Moran, the association stated "[t]he Board unanimously agreed that the Association and Management had just received the letter from State Farm and since Management had already been working with the Fire Marshall they have provided the email communications." No other information was provided in reference to the complaint.

The Ombudsman noted in the final determination, "I do not understand the Association's final decision and because there was no information or documentation provided that demonstrated that the Association had provided the Complainant copies of the requested documents, I can only assume such documents were not provided." Failure to provide copies of requested documents is a violation of § 55-510, specifically subsection E, which discusses providing copies of documents rather than allowing examination or copying of documents. However, the Ombudsman also noted that § 55-510 does not impose a time-frame for receipt of copies of association records. Section 55-510(B)(2) establishes that an association member's right to examination of association books and records may be exercised "...upon five business days' written notice for an association managed by a common interest community manager..."

The Ombudsman directed the association to provide Sledzaus and Moran copies of the documents requested within two weeks of the date of the Ombudsman's determination, unless those documents may be excluded pursuant to the language contained in § 55-510. The Ombudsman also directed the association to provide an outline of the documents it is providing to the Complainants, and if any documents are being excluded, the reason for doing so.

The Ombudsman further noted that the association failed to deliver its final determination to the Complainants within seven days of the association's decision as required by 18 VAC 48-70-50.8 of the Common Interest Community Ombudsman Regulations, and referred the matter for further investigation by the Department.

### File Number 2019-02748, The Crossing Property Owners' Association

#### Determination issued on May 23, 2019.

The Complainant (Bosiger) alleged that her association violated § 55-514.1 of the Property Owners' Association (POA) Act, by failing to conduct a complete reserve study. Section 55-514.1 requires an association to "[c]onduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components."

Bosiger stated that in 2017 her association conducted a study that only focused on the rear portion of the roofs in the buildings in the community, and not the entire roof. Bosiger argued that as a result of the incomplete study, the costs for replacement of the roofs are unknown, and "homeowner fees cannot reflect the 'current estimated replacement cost, estimated remaining life and estimated useful life, of the capital components' as required by law."

The association responded to the complaint by noting that many repairs had been made to the rear roof portions over the years as the rear roof portions seem to be more problematic due to their pitch. The association said the original estimates for potential roof repairs did only include the back half of the roofs, but now include the whole roof of each building. The association also stated that the reserve study is in the process of being revised and would be completed by November 2019,

The Ombudsman noted that while the association had obtained some estimates for roof replacement, the estimates only seemed to pertain to the rear portion of the roofs and not the whole roofs. It was also not clear if there were any other capital components in the community that may need to be included as part of a reserve study. Since all capital components should be included in the reserve study, the association did not appear to be in compliance with the provisions of the POA Act if it has failed to include all capital components, which would most likely include both the front and back of a roof.

The Ombudsman determined the association needed to update its 2017 reserve study and provide the information required by law, or create a new study that fully complies with the law. The Ombudsman further determined that having a revised reserve study available by November 2019, as the association proposed, was too long a timeframe, and asked the association to prepare a revised reserve study (or entirely new study) within 90 days of the date of the Ombudsman's determination. The Ombudsman further directed the association to ensure the study meets the requirements in the POA Act, and to provide the Ombudsman's office with a copy of the study.



## Ten Years of “Ombudsmanship”

*This article originally appeared in the July 2019 edition of Quorum™ - a publication of the Washington Metropolitan Chapter of the Community Associations Institute (WMCCAI) ([www.caiddc.org](http://www.caiddc.org)). Reprinted with permission.*

**By Heather S. Gillespie, Esq.**

*Heather has been the Common Interest Community Ombudsman at the Virginia Department of Professional and Occupational Regulation for the past ten years. She is a licensed attorney in the Commonwealth of Virginia and received her law degree from the University of Richmond, T.C. Williams School of Law and her undergraduate degree from Rice University.*

As difficult as it is for me to believe I have been the Common Interest Community Ombudsman for more than ten years now, it is even more difficult to believe I have also aged ten years. Of course, ombudsman years are different than human years, so I have probably aged 15 years over that ten-year period. What has hastened my aging process? As a one-person office, the 15, 519 phone calls, the 19, 316 emails, and the 2,515 Complaints and Notices of Final Adverse Decisions I have addressed over the past ten years. Add on to that nearly 100 presentations, roughly 70 Common Interest Community Board and Committee meetings and countless hours spent at the General Assembly.

During this time, my office also witnessed the enactment of the Common Interest Community Ombudsman Regulations (Regulations) which required every common interest community in Virginia to adopt an association complaint procedure. The association complaint procedure is intended to address violations of common interest community law and not violations of the association's governing documents. September 28, 2012 was the drop-dead date for adoption of a complaint procedure after the regulations were enacted on July 1, 2012. Yet, even now, nearly seven years since the regulations were enacted, many associations have failed to adopt complaint procedures.

As we work toward one hundred percent compliance with the Regulations, my office provides ongoing guidance to associations as they adopt complaint procedures and I help both owners and board members understand what constitutes an association complaint and what it means to implement a complaint process.

Association complaints, after moving through the association complaint procedure, can become Notices of Final Adverse Decision (NFADs), which are essentially appeals on the decision an association has provided in its final determination on an association complaint. Over the years, the most common complaints included in NFADs are complaints related to access to the books and records of an association; no notice of meetings; improper budgeting for reserves or no reserve study; disclosure packets that lack required information or are not provided to the seller in the required timeframe; and a lack of a method of communication within an association.

Based on the last ten years of Annual Reports that my office has provided to the General Assembly, the same complaints appear again and again. I believe the reason we see the same complaints repeatedly is that most of the complaints in the list above are related to transparency by an association board of directors. It has been my experience that whether the perception is right or wrong, any time owners believe there is a failure to provide or maintain transparency, complaints will be filed. I also believe that complaints will be submitted when an owner feels that he or she has no voice and is not being heard or understood by the Board of Directors or Management Company of an association.

After more than a decade of service to the Commonwealth of Virginia as the Common Interest Community Ombudsman is there a particular lesson that I have learned and consider worthy of sharing? It is probably the same lesson I learned very early in my role and I continue to try to apply every day. Be kind, be patient, and listen. Really listen. Conflicts in associations are inevitable. A home, whether it is a condominium, a house or a co-op, is usually the most costly investment that anyone will make in a lifetime and if someone believes that investment is threatened, in any way, they are bound to be upset. Any association or manager that can respond to owners with compassion and

consideration will almost always find it so much easier to resolve any conflict that may arise in the community. There will always be outliers for whom kindness, patience and attentiveness mean very little, but we can't let those individuals alter the way we work with the majority of owners and members.

### Ombudsman's Office Creates Instructional Video on CIC Complaint Process.

The Office of the Common Interest Community Ombudsman recently created an instructional video on the CIC complaint process. The video was posted to the DPOR website in early September 2019; and is also available through YouTube. In the video, the Ombudsman provides an overview of the CIC complaint process, beginning with a description of the requirements for the association internal complaint procedure—which all associations are required by state law to establish—and the basic process for making a complaint to an association. The Ombudsman then describes the process for submitting a final determination to the Ombudsman's office for consideration, and an explanation of determination process. The Ombudsman created the video to help better explain the CIC complaint process, and in particular distinguish between the association complaint process, which is the avenue of first resort for association complaints, and the Ombudsman's final determination process. The video, which runs for nearly eleven minutes, provides a concise, yet thorough explanation of the CIC complaint process, and provides helpful information for both association members, and members of the public alike.

## Board Member and Meeting Information

### *CIC Board Membership*

The CIC Board is composed of 11 members appointed by the Governor. Board members' terms are four years and a member can serve up to two terms. The *Code of Virginia* stipulates that the Board's membership is composed of:

- Three (3) representatives of common interest community managers
- One (1) attorney whose practice includes representing associations
- One (1) CPA who provides attest services to associations
- One (1) Time-Share Industry Representative
- Two (2) Representatives of Developers of CICs
- One (1) Citizen Serving/Served on Self-Managed Association Governing Board
- Two (2) Citizens Residing in Common Interest Communities

Drew R. Mulhare (Community Manager) First four-year term ends June 30, 2022 <b>Board Chair</b>	David S. Mercer (Attorney) First four-year term ends June 30, 2023 <b>Board Vice-Chair</b>	Maureen A. Baker (Community Manager) Unexpired term ends June 30, 2020
Tom Burrell (Citizen Serving on an Association Board) First four-year term ends June 30, 2022	Jim Foley (Community Manager) First four-year term ends June 30, 2023	Amanda Jonas (Developer) First four-year term ends June 30, 2022
Lori Overholt (Time-Share Industry) First four-year term ends June 30, 2020	Eugenia Lockett Reese (Citizen Residing in a CIC) First four-year term ends June 30, 2021	Scott E. Sterling (Developer) Second four-year term ends June 30, 2023
Katherine E. (Katie) Waddell (Citizen Residing in a CIC) First four-year term ends June 30, 2021	Vacant (CPA)	Mary Broz-Vaughan Director, Department of Professional and Occupational Regulation <b>Board Secretary</b>

### CIC Board Staff

- ◆ Trisha L. Henshaw  
Executive Director  
Trisha.Henshaw@dpor.virginia.gov
- ◆ Lisa T. Robinson  
Licensing Operations Administrator  
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- ◆ Joseph C. Haughwout, Jr.  
CIC Board and Regulatory Administrator  
Joseph.Haughwout@dpor.virginia.gov
- ◆ Tanya Pettus  
Administrative Assistant
- ◆ Lee Bryant  
Program Administration Specialist
- ◆ Ben Tyree  
Licensing Specialist

Those interested in receiving an appointment to the Common Interest Community Board may submit an application to the Secretary of the Commonwealth at the following website:

<https://www.commonwealth.virginia.gov/va-government/boards-and-commissions/>

### *2020 Meeting Dates*

March 12, 2020 @ 9:30 a.m.

June 4, 2020 @ 9:30 a.m.

September 3, 2020 @ 9:30 a.m.

December 3, 2020 @ 9:30 a.m.

*Note: As needed the Board will convene meetings of its Training Program Review Committee. These meetings typically take place on the afternoon preceding a scheduled board meeting date.*

## Contact Us

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### Office of the Common Interest Community Ombudsman

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