

# DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL REGULATION



## REPORT ON THE OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN

*Virginia*

**DPOR**  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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## **Background**

The General Assembly created the Office of the Common Interest Community Ombudsman, at the Department of Professional and Occupational Regulation, during the 2008 Session.<sup>1</sup> Previously, the Department's Common Interest Community Liaison served as an information resource for issues concerning condominiums, property owners' associations, timeshares and cooperatives.

Upon the July 1, 2008, effective date of the new legislation, the Department initiated the competitive hiring process for the Ombudsman and a Complaint Analyst position, located in the Compliance and Investigations Division. (The Common Interest Community Board established by Chapter 23.3 of the *Code of Virginia* operates within the Department's Licensing and Regulation Division). The Office was fully staffed beginning on September 18, 2008.

## **Statutory Authority**

Section 55-530 of the *Code* provides the statutory authority for the Office of the Common Interest Community Ombudsman. The Office shall:

- 1. Assist members in understanding their rights and the processes available to them according to the declaration and bylaws of the association;*
- 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 complaint filed;*
- 6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested, notices of complaint received, any actions taken, and the disposition of each such matter;*
- 7. Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board, and referrals to*

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<sup>1</sup> House Bill 516/Senate Bill 301 (2008)

*public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request;*

*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.*

In accordance with the statutory requirement, this document reports on the activities of the Office of the Common Interest Community Ombudsman. Reflecting the time at which the Office became fully staffed, the report covers the period from September 18, 2008, to November 24, 2008.

## **Inquiries**

During the reporting period, the Office received or placed 222 telephone calls and received more than 300 electronic mail messages. In addition, the Office received 77 requests for assistance requiring staff review – 38 concerning property owners' associations (POAs), 18 concerning condominium associations, and 21 concerning timeshare associations.

The Office has resolved or closed 17 of these inquiries, and analysis – including review of documents (i.e. declarations, bylaws, etc.) – is complete for 83 percent of the remaining inquiries.

The majority of condominium and POA inquiries relate to association management or governance, including issues such as meeting notices, financial management, board member resignations, and general board communications and leadership. Several inquiries from association members also express interest in disbanding due to new statutory requirements and general acrimony among members and their boards. Timeshare inquiries primarily relate to concerns about marketing and sales tactics.

## **Complaints**

Pursuant to Section 55-530.E of the *Code*, the Common Interest Community Board is currently in the process of developing regulations, in accordance with the Administrative Process Act (APA), to define “final adverse decision” and to determine requirements for the complaint process. As a result, the Office of the Common Interest Community Ombudsman cannot yet receive “Notices of Complaint” regarding associations.

## **Education**

In addition to briefing the Virginia Housing Commission, the Ombudsman has presented informational sessions and attended functions hosted by common interest community stakeholders such as the Property Owners’ Association of Virginia (POAVA) and the Community Associations Institute.

The Office is in the process of updating its presence on the Department website and revising educational materials for distribution.

## **Legal Developments**

The significant development in state law relating to common interest communities occurred with the enactment of House Bill 516/Senate Bill 301 during the 2008 General Assembly Session. The legislation transferred responsibility regarding POAs, condominiums, cooperatives, and timeshares from the Real Estate Board to the newly created 11-member Common Interest Community Board. The new law replaces the Community Association Liaison position with the Common Interest Community Ombudsman, an attorney. The legislation grants the new Board regulatory authority over associations and provides for mandatory certification (licensure) of association managers. The new law also creates a recovery fund to pay court-appointed receivers in common interest community cases.

In addition, the legislation reorganizes the Property Owners' Association Act (POAA) and the Condominium Act, and establishes limits on fees charged for the provision of disclosure packets and resale certificates. The statutory fee structures differ depending on whether an association is self-managed or managed by a professional manager. In addition, the amended POAA requires association declarations to comply with the Act; increases the liability cap on associations and managers for failing to comply; and requires the seller to pay for the disclosure packet or resale certificate if settlement does not occur within 90 days.

There are no significant federal actions affecting common interest communities during the reporting period.