

# DEPARTMENT OF PROFESSIONAL & OCCUPATIONAL REGULATION



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



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## **Executive Summary**

The General Assembly created the Office of the Common Interest Community Ombudsman (the “Office”), at the Department of Professional and Occupational Regulation, during the 2008 Session.<sup>1</sup> Although regulations governing the complaint process for associations are still in progress, the Office this year accepted all complaints submitted and reviewed them for violations of common interest community laws or regulations. Previously the Office referred to complaints as “inquiries,” pending the final regulations. However, in order to serve the public and respond to the issues raised by association members in a consistent manner, the Office processed inquiries in the same manner that the Department handles all other submissions.

Upon adoption of final Ombudsman regulations, the primary focus of the Office will be to review “final adverse decisions,” as required under § 55-530 of the *Code of Virginia*. In addition, the Office intends to increase educational opportunities for associations and association members through presentations, a strong Internet presence, and publications related to the governance of common interest communities in the upcoming year.

## **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;*

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

*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 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 statutory requirements, this document reports on the activities of the Office for the period from November 25, 2008, to November 25, 2009.

## **Inquiries and Complaints**

During the reporting period, the Office received 1,416 telephone calls and 982 electronic mail messages ("e-mail"). Office representatives responded promptly to these phone calls and e-mails, which primarily concerned requests for information or questions related to common interest communities.

In addition, the Office received 275 complaints on the following topics: 43% related to Property Owners' Associations, 22% related to Condominium Unit Owners' Associations, 33% related to Time-Shares, and 3% related to Management Companies.

The Office resolved or closed 297 of these complaints (inquiries), which includes resolution or closure of complaints received prior to the current reporting period.

The majority of Condominium and Property Owners' Association complaints relate to actions by the association board, including lack of notice for meetings, questionable election processes, lack of responsiveness, and inappropriate use of power by the board. While few in number, several complaints related to condominiums in or on the verge of bankruptcy, and concerns that such action may jeopardize the owners' investment. In some cases, a new developer has intervened and purchased the entire condominium development. Time-share inquiries continue to relate to concerns about marketing and sales tactics, although a recent surge in complaints focuses on increases in maintenance fees.

## **Regulations**

Pursuant to Section 55-530.E of the *Code*, the Common Interest Community Board established a Regulatory Review Committee to draft regulations, in accordance with the Administrative Process Act, to define "final adverse decision" and to determine requirements for the internal association complaint process. The proposed regulations, as approved by the Board, will continue through the standard regulatory process. Upon approval by the Governor of final regulations, the Office will cease accepting general complaints (except for those related to manager licensure, association registration, and time-shares) and will receive only "Notices of Final Adverse Decision."

## **Education**

The Ombudsman provided 24 presentations throughout the Commonwealth during the current reporting period, including information sessions for the Southeastern Virginia Chapter of CAI (Community Associations Institute) 2009 Legal & Legislative Update, the Property Owners' Association of Virginia, Inc., the CAI Virginia Leadership Retreat, the Hampton Roads REALTORS® Association, and the CAI Community Association Day. The Ombudsman participated on the HB 516 Virginia Legislative Action Committee Panel, which presented a discussion forum and question-and-answer session at multiple venues throughout northern Virginia, with the final session recorded for the local cable channel in Fairfax County. The Ombudsman also served as a member of the Common Interest Communities workgroup of the Housing Commission.

## Legal Developments

### State Developments

Significant developments in state law related to common interest communities from the 2009 General Assembly Session are listed below.

<b>Bill No.</b>	<b>Patron</b>	<b>Description (Code Reference)</b>
HB 1785	Robert D. Hull	Exception from disclosure packets requirements for lots sold by auction as long as disclosure packet provided to purchasers prior to sale. (§ 55-509.10)
HB 2289/ SB 896	Benjamin L. Cline/ Ryan T. McDougle	Commissioner of Revenue may request names of property owners from associations. (§ 58.1-3901)
HB 2305	H. Morgan Griffith	Actual salary information of the six highest compensated employees of a POA, if over \$75,000, must be available for examination and copying by association members, except during declarant control period. (§ 55-510)
HB 2417	Joseph F. Bouchard	Associations may amend solar covenants by removing or relaxing restrictions on use of solar collection devices if amendment is adopted by membership. (§ 67-701)
HB 2599	Barry D. Knight	If time for creation of a cooperative has expired, or rights of special declarant have expired, as set forth in the declaration, two-thirds vote (or any other appropriate vote according to declaration) of the association can revive and reinstate expired right to create cooperative or expired rights of special declarant, and vest in any person, all the powers, rights, privileges, and authority of declarant to exercise such rights. (§ 55-453)
SB 1143	Mary Margaret Whipple	Technical amendments clarifying individual members of board are not liable for monetary penalties from CIC Board; requiring a hearing prior to any such penalty; increasing annual registration fee from .02% to .05% with a minimum of \$10 and a maximum of \$1,000; updating delivery of disclosure packets to conform to resale certificates; changing venue for Board action to Henrico County. (§§ 54.1-300, 54.1-2349, 54.1-2351, 54.1-2352, 55-79.2, 55-79.93:1, 55-399, 55-399.1, 55-504.1, 55-509.6, 55-516.1, and 55-530.1)

### **Federal Developments**

Federal developments in common interest community law are ongoing and some issues are still pending. The Worker, Homeownership and Business Assistance Act of 2009 extended and expanded the prior homebuyer credit and provided anti-fraud measures to help fight tax fraud related to homeownership.

The Federal Trade Commission (FTC) Red Flag Rule, which has been delayed, may affect community associations as it pertains to identity theft and entities that accept installment payments.

The Federal Communications Commission (FCC) decision to ban exclusive access agreements between property owners and cable operators was upheld in the United States Court of Appeals for the District of Columbia.

Federal Housing Administration (FHA) regulations related to the approval process for condominiums are still underway. Due to the host of ways in which these FHA regulations may affect citizens who purchase a condominium in the future, legislative action committees are seeking alternatives to the regulations as currently written.

Hawn v. Shoreline Towers Phase I, in the U.S. District Court of Northern District of Florida, resulted in a loss for the plaintiff, but created a reminder to community associations that they must be aware of fair housing laws and they must respond to requests for reasonable accommodations.