

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 2020-2021



Department of Professional and Occupational Regulation

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PREFACE

The Office of the Common Interest Community Ombudsman prepared the report contained herein pursuant to § 54.1-2354.3 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 27, 2020, through November 26, 2021.

Office of the Common Interest Community Ombudsman

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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 27, 2020, through November 26, 2021.**

This year was a repeat of last year in many ways: the pandemic continued and teleworking was the norm. The Office continued to respond in a timely manner to all inquiries, and ultimately received many more common interest community complaints than in the past. We also transferred the handling of time-share complaints to the DPOR Complaint Analysis and Resolution section for general processing, since time-shares are not technically common interest communities, and the Office has no authority over time-share owners’ associations.

Surprisingly, it appears that associations are still struggling to adopt complaint procedures and to carry out their responsibilities under those procedures. The Office continues to advise associations on their obligations under the Common Interest Community Ombudsman Regulations (“Regulations”). We provide resources for associations to understand the complaint process and review draft complaint procedures for adherence to the Regulations. This year the Office received a significant increase in allegations that associations failed to respond to complaints submitted through their association complaint procedures.

As has always been the case, associations continue to struggle to carry out the three necessary components of the internal complaint procedure: (1) acknowledge receipt of the complaint; (2) provide consideration of the complaint; and (3) provide a final decision on the complaint. Even after the Office advises an association of the necessary steps, the same association will often continue to ignore the required sequence the next time it receives a complaint. This results in ongoing monitoring by this Office as we work toward ensuring that everyone who submits a valid association complaint not only can trust their complaint will be addressed properly, but also will be able to use their right to “appeal” the decision to this Office by filing a Notice of Final Adverse Decision.

On a very positive note, the Office obtained full compliance with all Determinations issued pursuant to a submitted Notice of Final Adverse Decision. This confirms that the complaint procedure is effective and helpful, as it appears that in most (if not all) cases, associations failed to follow the law unknowingly rather than out of willfulness.

Last year, we reported on the difficulty in helping with solar panel issues because the laws governing them fell under Title 67, the Virginia Energy Plan, rather than common interest community law. Effective October 1, 2021, the Property Owners’ Association Act, the Condominium Act, and the Virginia Real Estate Cooperative Act incorporated provisions of Virginia Code § 67-701, meaning that these solar panel matters now fall under the authority of this Office, but only to the extent that any issues that arise do not pertain to the governing documents of the association.

During the 2021 Session of the General Assembly, the legislature also cemented associations' rights to hold fully or partially virtual meetings, for both board meetings and owner meetings, which has helped to bring more owners to meetings and provides a safe environment for those who do not wish to attend in-person meetings.

OMBUDSMAN REGULATIONS & ROLE OF OFFICE

The Common Interest Community Ombudsman Regulations (18VAC48-70), enacted in 2012, require community associations to establish an internal association complaint procedure. The statutory framework for complaint processing, established by the legislature when the Office 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 § 54.1-2354.4 and the Regulations, are appropriate after—and only after—an owner 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 internal 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 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

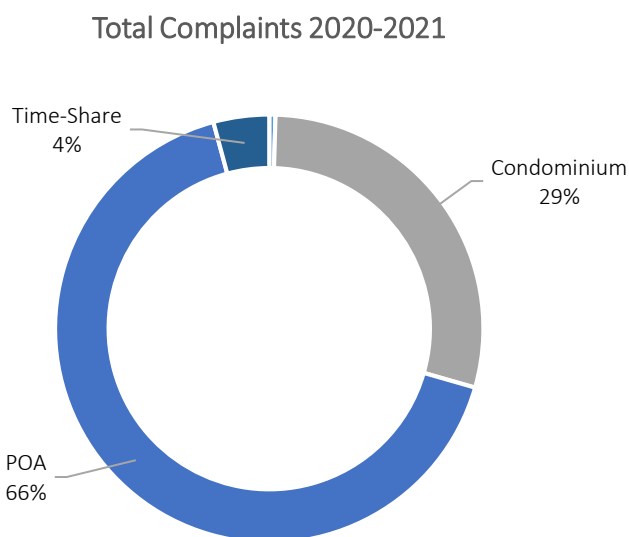
During the 2020-2021 reporting period, the Office responded to 1,350 telephone calls and 3,045 email messages. The Office continues to respond as quickly as reasonably possible to all inquiries, and generally provides a response within 24 hours to any phone call or email.

The volume of emails increased by nearly 10% this year, exceeding the amount the Office has ever received in its thirteen years of existence. Phone calls remained in line with what the Office has received in prior years with a slight uptick in number.

We continued to field many questions and concerns related to holding virtual meetings; these inquiries only increased after new legislation effective July 1, 2021, allowed meetings by electronic means for both board and owner meetings. Despite the initial uncertainty, the new law is likely to be a boon to associations as they have seen a substantial increase in attendance with the use of virtual meetings. Somewhat surprisingly, the Office also heard from owners who did *not* want to attend meetings carried out using electronic means and preferred to attend in person—even if there really was no in-person component of a particular meeting.

Since its inception, this Office has responded to time-share complaints because they dealt with concerns related to associations and seemed the best fit. Over time, it became clear that time-shares are an entirely different animal from community associations. Moreover, they are specifically excluded from the definition of a common interest community.

For these reasons, and to open up more time to address common interest community issues, time-share complaints and inquiries were transferred to the DPOR Complaint Analysis and Resolution general intake section and no longer fall under the authority of this Office. This change became effective January 1, 2021.



The Office received 214 complaints¹ this year:

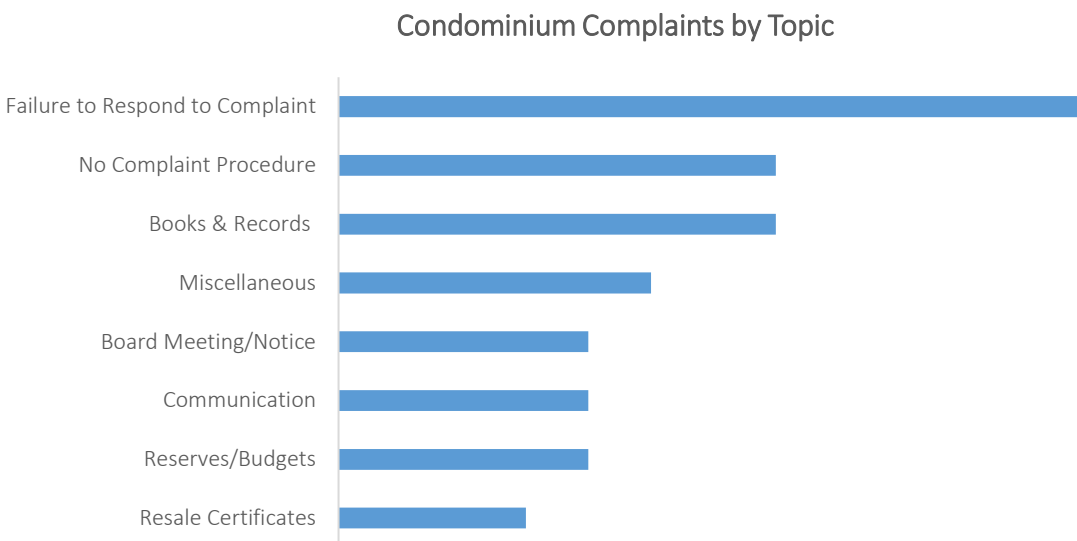
- 66% related to Property Owners' Associations (POAs);
- 29% related to Condominium Unit Owners' Associations; and
- 4% related to Time-Shares.

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 through December 31, 2020; and complaints that have been improperly submitted directly to the Office when they should have been submitted through an association's internal complaint process.

Ninety-five percent of all complaints received this year related to common interest communities (POAs and condominiums), reflecting the change in processing time-share complaints. This indicates the Office is more properly attending to issues related to common interest communities, which is where its authority and responsibilities rest, unlike in prior years when time-share complaints generally made up 28-40% of total complaint volume.

Overall, condominium complaints increased by 32% and POA complaints more than doubled (56%). Although we have no true method for determining what caused the dramatic surge in common interest community complaints this year, it would appear to involve several factors:

- More people quarantined or worked from home during this reporting period and, as a result, became more aware of their association's daily activities and found more issues that caused them concern.
- Associations were also not "back to normal," meaning many held meetings less frequently, struggled to find employees or contractors to take care of maintenance issues, and communication seemed to falter among boards, managers, and owners.
- A dynamic that the Ombudsman experienced firsthand and was evident in many of the complaints, emails, and phone calls the Office received, was a pervasive lack of civility on the part of association owners as well as managers and boards of directors.



The greatest number of condominium association complaints continue to relate to associations that did not respond to a complaint submitted through the association complaint procedure, or that still have not adopted a complaint procedure.

These types of complaints require the Office to guide an association through the complaint process and review draft complaint procedures. Associations are not always diligent about following through with their compliance obligations, which requires the Office to monitor and check back. Other common topics this year included complaints related to access to books and records, incomplete or delayed resale certificates, improperly held meetings and lack of meeting notice, and poor or absent communication within associations.

As noted in prior reports, fire and water damage continue to be a problem for condominiums. Owners report that their associations are taking what they believe to be an unreasonable amount of time to address such damage, resulting in an owner having to live elsewhere or remain in potentially unsafe, unhealthy conditions. This Office has no authority to address these types of inquiries, however, because the responsibility of an association to make necessary repairs is dictated by its governing documents and not common interest community law.

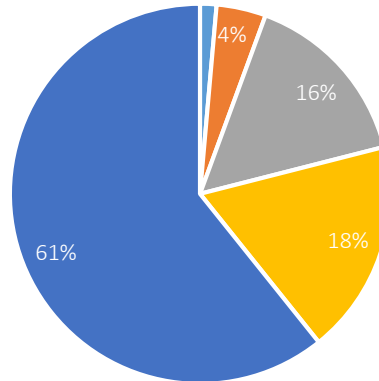
As with condominiums, the largest number of complaints for POAs involved an association's failure to respond to a complaint submitted through the association complaint procedure, followed by allegations that an association has not adopted an internal complaint procedure. The next three most common POA complaint areas included failing to provide access to association books and records, not giving proper notice of meetings or holding meetings at all, and poor or absent communication within associations.



Northern Virginia accounted for 61% of all complaints received by the Office, with the remainder coming from the Central Virginia region (16%), the Tidewater area (18%), and Southwest Virginia (4%).

Complaints by Location

■ Other ■ Southwest ■ Central ■ Tidewater ■ Northern



Complaint Procedure

The association complaint process continues to have a positive impact by providing owners and residents the opportunity to raise concerns about their association and resolve potential violations, by their board, of common interest community law.

Complaints alleging an association’s failure to adopt a complaint procedure made up 12% of all the complaints received by the Office, a one-percentage point decrease from the prior year. Complaints alleging a failure to respond to a submitted complaint made up 22% of all complaints received, resulting in a six-percentage point increase over the prior year. The decrease in the number of associations neglecting to adopt a complaint procedure is encouraging, especially in light of the dramatic overall increase in complaints received this year.

The surge in total complaints likely also drove the increase in the number of associations that failed to respond to submitted complaints. As our yearly numbers demonstrate, more people filed complaints about their associations this reporting period, suggesting more owners wanted to submit complaints through their association complaint process as well—at which point they learned their association did not, in fact, either have the required complaint procedure in place or fully understand its obligation to respond.

The Office continues to spend a substantial amount of time advising associations about the adoption of a complaint procedure, reviewing draft complaint procedures (solely for compliance with the Regulations), and urging associations to carry out the association complaint process properly. Generally, we contact associations that have failed to respond to a submitted complaint or adopt a complaint procedure and provide them a two-week period to provide consideration of a complaint and a final decision or to demonstrate they have a complaint procedure in place. If extenuating circumstances exist, we will allow additional time, but only in those situations where it is clear the association has already made progress on a response to the complaint.

This year, the Office again achieved 100% compliance with these complaints, meaning the association either adopted a complaint procedure or followed the Regulations by providing access to its full internal complaint process, including consideration and a final decision.

The only time it is appropriate to submit a complaint directly to this Office is when the complainant is alleging an association failed to adopt a complaint procedure, or that the association failed to respond to a submitted complaint. Before this Office takes any action, complainants must demonstrate that they have either formally requested the complaint procedure, or that they submitted a complaint that was appropriate for the complaint procedure.

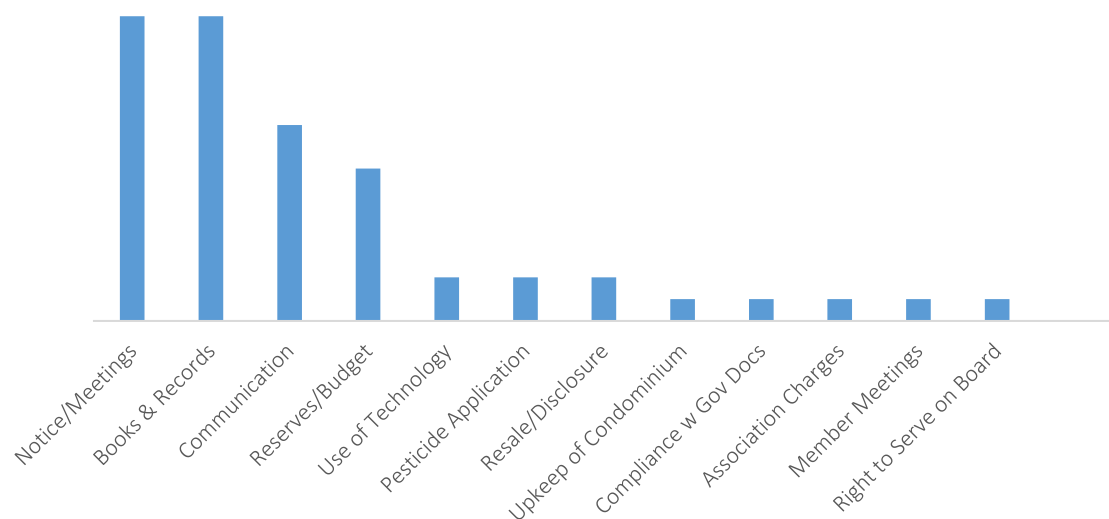
Often a complainant may simply assume his association does not have a complaint procedure if he has never heard about it. Or, he may think he can submit any type of complaint to the association and expect a response. Therefore, the Office must ask for proof that a complaint procedure was formally requested or that the submitted complaint alleged a violation of common interest community law before moving forward and seeking compliance from the association.

Ombudsman Determinations

During the 2020-21 reporting period, the Office received 63 NFADs—an 80% increase over the prior year! Many, and perhaps most, of these NFADs consisted of multiple complaints, which cause them to be extraordinarily time consuming to review and provide a determination.

The four most frequent complaint topics that formed the basis for NFADs received by this Office were Method of Communication, Meetings and Notice, Reserve Studies and Budget Requirements, and Access to Books and Records.

Notice of Final Adverse Decisions by Topic



Many of the NFADs involved efforts by owners to stay abreast of activity in their associations during the pandemic, even though they did not want to attend in-person meetings. In a similar vein, communication issues arose multiple times as owners wanted to be able to share information with other owners in the midst of quarantine and learned that, in some cases, their associations had not adopted an appropriate method of communication to allow for this.

Another common theme in NFADs involved notice of meetings and annual meetings. In quite a few cases, owners alleged that their board improperly held a meeting without legal notice when it made a decision via email; however, none of the board members actually met to discuss or transact the business of the association. Many associations also failed to hold their annual meetings, which was especially true for condominiums since many could not do so virtually for the first half of the year. Legislation enacted July 1, 2021, addresses this issue and allows associations to hold fully virtual meetings of the board as well as members/owners.

Access to books and records continued to be a common concern, with the most frequent NFADs on this topic involving associations that simply did not have the requested records, as well as those that failed to provide the requested access for no viable reason.

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>.

EDUCATION & OUTREACH

As was the case last year, opportunities for in-person outreach this year were limited due to the pandemic. The Ombudsman appeared on Fairfax County Channel 16: *Your Community, You're Connected* and provided several other virtual presentations that reached at least 200 attendees (likely many more, since the appearances were posted online). Although the benefits of in-person interaction cannot be ignored, virtual presentations reach a much broader audience and consume far fewer resources.

The informational videos posted on the Office's webpage have proven to be extremely helpful in explaining to complainants and boards the complaint process and the proper way to draft an association complaint procedure.

The Ombudsman provides technical assistance and objective analysis for General Assembly members who are considering legislation. 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 a frequent contributor at meetings with stakeholders related to community associations. For example, this reporting period she again participated as a member of the Housing Commission's Common Interest Community Work Group; met with representatives

from the Virginia Association of REALTORS® to provide general information about the Office and its responsibilities; and joined a meeting with the Department of Housing and Community Development (DHCD) to discuss building safety in the aftermath of the Surfside collapse.

The Ombudsman participated in the CICB Regulatory Review Committee for the CIC Manager Regulations, and will play an instrumental role in the upcoming review of the Ombudsman Regulations. She continues 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.

COVID-19

The COVID-19 pandemic continued to affect associations in different ways. For instance, many associations were unaware of the authority to hold board meetings virtually as a result of an amendment to the Appropriations Act approved in 2019. Legislation effective July 1, 2021, extends that authority to allow virtual annual or member/owner meetings as well. This should prove to be an enormous help to associations and make it much easier for them to carry out their elections, which was a difficult, if not impossible, task for some associations the prior year.

Associations struggled to hold due process hearings, considerations under their association complaint procedures, and other meetings because they did not understand they could be considered board meetings and held virtually. This Office also heard from quite a few people dissatisfied with virtual meetings who wished to compel their associations to meet in person.

The Office continued to respond to inquiries related to use of the Nonstock Corporation Act (Virginia Code § 13.1-865) to make decisions without a meeting. This intersection of the Nonstock Corporation Act is understandably confusing for owners since it appears to contradict common interest community law. We are limited in the guidance we can provide regarding these issues, however, because this Office has no jurisdiction over the Nonstock Corporation Act, which is not considered common interest community law.

Many associations chose to keep amenities or common elements such as indoor gyms and clubhouses closed this year to reduce the risk of transmission of the virus. Others, however, did re-open pools, outdoor exercise areas, and shared spaces with mitigation measures.

CHAMPLAIN TOWER SOUTH CONDOMINIUM – SURFSIDE, FL

The June 24, 2021, collapse of Champlain Tower South Condominium in Surfside, Florida, will have long-lasting repercussions. The horrific loss of 98 lives is something our country will not soon forget and, for those involved in community associations, the impact may last forever. Congress approved \$22 million for an investigation by the National Institute of Standards and Technology (NIST) to determine the cause(s) of the collapse; however, it will likely take months before we know what factors contributed to the disaster and whether it could have been avoided.

After the Surfside event this summer and continuing into the present, this Office received an enormous uptick in inquiries about maintenance and safety issues related to condominiums. In addition to expressing concerns about puddling water in parking garages, owners are now reporting crumbling edifices and cracks in both condominium exteriors and unit interiors, among other signs of deterioration and aging. Understandably, owners are expressing anxiety and fear about their aging buildings and trying to ensure they do not suffer the same fate as the Champlain Tower South Condominium.

Several years ago, 400 condominium owners were evacuated from their homes in Fairfax County when their units became uninhabitable because the pillars supporting the building moved several inches. The structural damage affected 180 units, with 32 sustaining severe damage.

Virginia does not require routine checks of building facades and walls. However, common interest community law does mandate that every association—whether a condominium or a property owners’ association—carry out a reserve study at least every five years. The reserve study is often conducted by professional engineers and other safety experts. A reserve study should include the computation of the remaining life of an association’s capital components, which can be helpful in determining whether existing structural problems need to be addressed. (Based on news coverage of the Surfside collapse, there were earlier indications that the building had structural damage, though we do not yet know if that contributed to the failure.)

In the aftermath, Richmond’s mayor expressed interest in working with local and state officials to review building safety regulations. Currently, there are no statewide requirements in place for safety inspection after a building has been completed or renovated. Whether the General Assembly responds to the Surfside collapse with new legislation to help ensure associations take proper precautions and exercise the oversight necessary to prevent a similar tragedy in Virginia is unknown. While it seems likely that constituents may ask their legislators to address this issue, as of now this Office is not aware of any pending legislation.

CONSTITUENT EXPECTATIONS

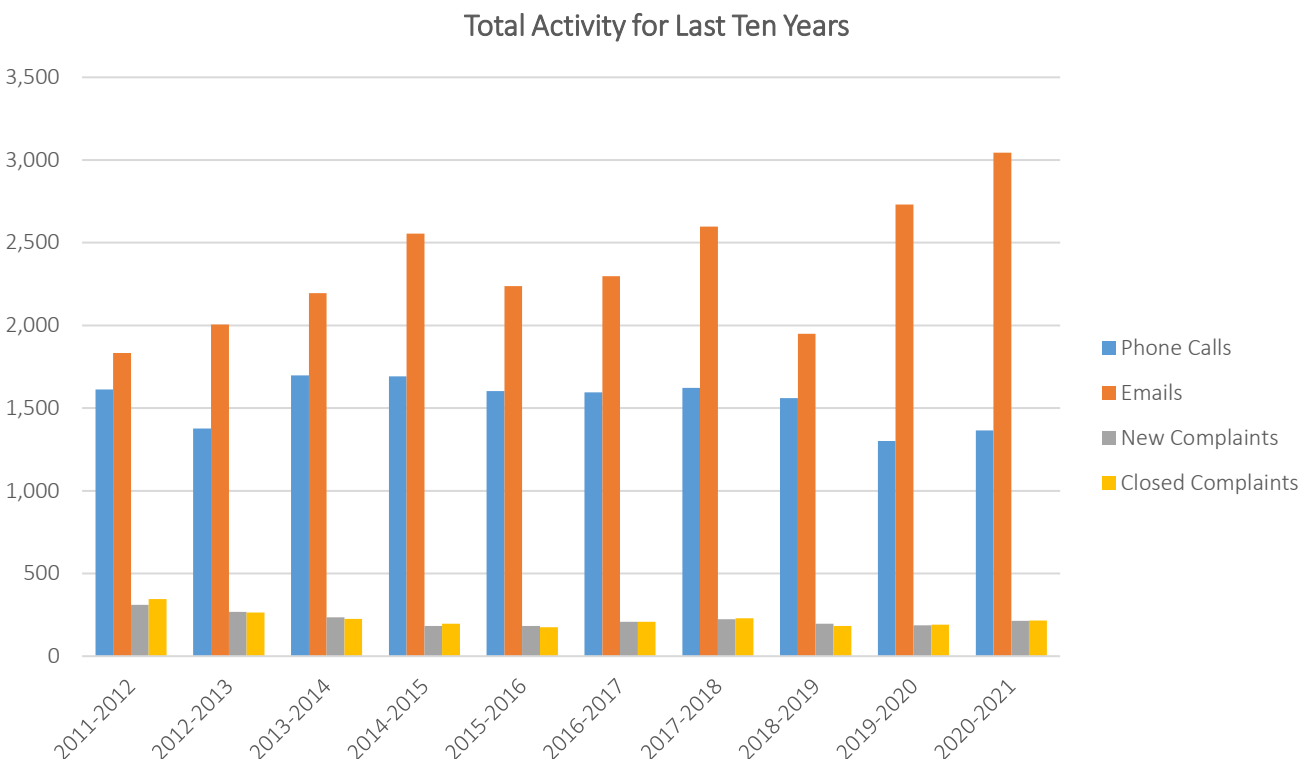
As noted throughout this report, this year the Office experienced a substantial spike in common interest community complaints (48%) and an enormous increase in NFADs (80%). Although a definitive reason for the surge is elusive, it seems fair to assume that with so many people in quarantine or working from home, more found themselves thinking about their associations and discovering concerns they had not previously considered. In addition, several associations received multiple association complaints from particularly aggressive complainants, and these complaints resulted in multiple NFADs submitted to this Office.

During this reporting period, the Office received a record-setting number of emails, the most ever in its 13-year existence. The complexity of many of these email inquiries was daunting, requiring lengthy research and a careful review and response. Association managers reached out to the Office more this year than in the past, largely to discuss the best way to hold meetings in the midst of a pandemic, as well as how to respond appropriately to association complaints.

Emails, phone calls, and complaints alleging harassment, bullying, defamation, and other civil law issues continued at a steady pace and appeared more prevalent than in previous years. The Office also referred many constituents who believed their association engaged in illegal housing discrimination to the Virginia Fair Housing Office. Owners who experienced catastrophic damage from water or fire had a particularly difficult time this year; they were often displaced for lengthy periods and associations seemed to struggle to rebuild or make repairs. We do not have any authority to address these types of issues, but we hear about them on a frequent basis.

Owners felt somewhat disenfranchised from their associations this year, since many associations failed to hold regular board meetings and did not carry out their annual meetings, which meant that elections were not held and existing boards remained in place for another year. Conflicts arose in associations, especially condominiums, when work needed to be performed inside a unit and owners were not eager to allow strangers into their home in the middle of a pandemic; this also made inspections for resale certificates difficult.

This year the Office continued to find that associations had not adopted an association complaint procedure and we had to walk them through the process of doing so. It is likely this will always be a problem as many smaller associations are not aware of their obligation to have a complaint procedure. Associations that did not follow their association complaint process or adhere to the Regulations was a more common issue, which is unfortunate because it alienates a complainant who is simply trying to resolve what they perceive as a possible violation of common interest community law. As we have done since the inception of the association complaint process, this Office will continue to work with associations and help them to understand their obligation to adopt and execute an association complaint process.



Ultimately, according to its statutory mandate, the 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

This was another unusual year in which very few common interest community bills were introduced and passed during the 2021 Session of the General Assembly. Also included below is legislation that, while not technically common interest community law, may have an impact on associations in general.

Bill No.	Patron	Description
HB 1816 SB 1183	Bulova Dunnavant	Allows meetings of property owners' associations, boards of directors, unit owners' associations, executive boards, and committees to be held entirely or partially by electronic means, provided that the board of directors or executive board, as applicable, has adopted guidelines for the use of electronic means for such meetings. The bill requires that such guidelines ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The bill grants authority for determining whether any such meeting may be held entirely or partially by electronic means to the board of directors or executive board, as applicable. The bill amends the definition of "electronic means" to provide that a meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. The bill allows members of associations to vote at meetings of such associations by absentee ballot, and allows such members to vote in person, by proxy, or by absentee ballot by electronic means, provided that the board of directors or executive board, as applicable, has adopted guidelines for such voting. Finally, the bill provides that if a vote, consent, or approval required to be obtained by secret ballot is accomplished through electronic means, the electronic means shall protect the identity of the voter, and that if the electronic means cannot protect the identity of the voter, another means of voting shall be used.
SB 1463	Cosgrove	Provides that existing provisions prohibiting an association from prohibiting a property owner from installing a solar energy collection device on that owner's property do not apply to the architectural review committee of a planned unit development, provided that the recorded declaration for that property establishes that the architectural review committee has general authority over design and development standards for properties located within the planned unit development.

Bill No.	Patron	Description
HB 1842	Keam	Permits (i) except to the extent that the declaration provides otherwise, the board of directors of a property owners' association to establish reasonable rules that restrict smoking in the development, including (a) rules that prohibit smoking in the common areas and, (b) for developments that include attached private dwelling units, rules that prohibit smoking within such dwelling units, and (ii) except to the extent that the condominium instruments provide otherwise, the executive board of a condominium unit owners' association to establish reasonable rules that restrict smoking in the condominium, including rules that prohibit smoking in the common elements and within units. The bill clarifies the authority of executive boards of condominium unit owners' associations to establish, adopt, and enforce rules and regulations with respect to the use of the common elements of the condominium and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved by the condominium instruments to the unit owners. The bill also permits unit owners, by a majority of votes cast at a meeting of the unit owners' association, to repeal or amend any rule or regulation adopted by the executive board.
SB 1453	Edwards	Creates proposed Title 45.2 (Mines, Minerals, and Energy) as a revision of existing Title 45.1 (Mines and Mining) and existing Title 67 (Virginia Energy Plan). Proposed Title 45.2 consists of 21 chapters divided into five subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy). The bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to the administration of the Department of Mines, Minerals and Energy, underground and surface coal mining, underground and surface mineral mines, the Virginia Gas and Oil Act, energy from wind, solar, geothermal, and nuclear sources, and energy policy. <i>The bill moves the remaining provisions of Title 67 that are not appropriate for inclusion in proposed Title 45.2 into other existing titles of the Code. The bill has a delayed effective date of October 1, 2021, and is a recommendation of the Virginia Code Commission.</i>
Bill No.	Patron	<i>While not specific to common interest communities, the following legislation may impact them:</i>
HB 1971	Carr	Provides that for the purposes of the Virginia Fair Housing Law, when a person receives a request for accessible parking to accommodate a disability, the person receiving the request shall treat such request as a request for reasonable accommodation.

Bill No.	Patron	<i>While not specific to common interest communities, the following legislation may impact them:</i>
HB 2099	Coyner	Reduces from 20 years to 10 years from the date of a judgment the period of time within which an execution may be issued or action may be taken on such judgment. The bill provides that the limitation of the enforcement of a judgment may be extended by a recordation of a certificate prior to the expiration period in the clerk's office in which a judgment lien is recorded. The bill provides that such recordation shall extend the limitations period for 10 years from the date of such recordation. Under current law, such limitation period may be extended on motion of the judgment creditor or his assignee. The bill allows a settlement agent or title insurance company to release a judgment lien, in addition to a deed of trust as provided under current law, provided that the obligation secured by such judgment lien has been satisfied by payment made by the settlement agent and whether or not the settlement agent or title insurance company is named as a trustee under such lien or received authority to release such lien. The bill has a delayed effective date of January 1, 2022.
SB 1108	Stanley	Increases from \$25,000 to \$50,000 the maximum civil jurisdictional limit of general district courts for civil actions for personal injury and wrongful death. The bill contains an emergency clause.

Virginia Court Cases

Presumably resulting from the aftermath of court closures amid the pandemic, there were even fewer common interest community court cases this year; however, several cases are currently pending in the Virginia Supreme Court.

The cases below have some bearing on common interest community law.

- **Belmont Glen Homeowners Assoc., Inc. v. Sanjay Sainani, et al.**
Loudoun County Circuit Court

This case was on remand by the Virginia Supreme Court. The association filed a warrant in debt to collect assessments for violations of association policies regarding holiday lights. The owners filed a counterclaim seeking injunctive relief, breach of contract, and in the alternative to breach of contract, breach of the POA Act regarding improper enforcement of the holiday policies.

The court granted a Motion to Strike the counterclaim and awarded the warrant in debt amount (\$884.17) as well as attorney fees and costs (\$39,148.25). The owners appealed and the Supreme Court of Virginia ruled the holiday policies exceeded the scope of the declaration and were not reasonably related to those declarations. This rendered the policies unenforceable, resulting in the Supreme Court reversing the lower court decision and re-opening the counterclaims.

The lower court granted a subsequent Motion for Partial Summary Judgment regarding the breach of contract, which in turn caused the breach of the POA Act to be moot. After being denied its request to present new evidence, the owners filed a Motion to Reconsider, which was also denied. The court did allow the owners to present evidence on the issue of attorney fees.

The owners requested an injunction to stop the association from enforcing its holiday policies; an injunction to stop the association from imposing charges and suspending privileges for violations, costs, reasonable attorney fees, and interest; and any other relief the court deemed necessary. The court denied the injunctions, based on a Supreme Court decision that injunctive relief should only be granted if the party would suffer irreparable harm and there is no adequate remedy at law.

The Court found there is a risk of irreparable harm but that there is an adequate remedy available. In addition, the Supreme Court had already found the policies unenforceable. The court presumes the association will adhere to the Supreme Court's findings and if it does not, the owners can utilize enforcement actions against the association. As to the costs requested, the court found that the parties had agreed to bifurcate attorney fees and costs claims at an earlier time and as such, this agreement could not be now altered.

- **Dogwood Valley Citizen's Ass'n v. Miller**
Circuit Court of Greene County

This case resulted from a Motion for Reconsideration by the Plaintiff. The court found that two members of the association's board of directors attempted to sell memberships on the board and attempted to sell the corporation. However, the evidence was insufficient to show that the directors had any authority to sell memberships. The court found this demonstrated an intent to defraud and that there was probable cause that the directors had also violated multiple Virginia penal codes, including obtaining money by false pretenses, solicitation/attempt to commit embezzlement and to enter into a conspiracy to do so, and money laundering.

This case was the result of efforts by the two directors to sell board memberships for \$5,000 and the whole corporation for \$300,000. They also commingled personal funds with association funds, and disregarded corporate formalities. The plaintiffs provided no evidence that they had authority to sell the memberships or the corporation; the sale was not authorized by other directors or shareholders and it was not fair to the corporation.

The Court denied the Motion. The Directors appealed the decision to the Virginia Supreme Court in October, and no hearing date has been set.

Federal Developments

Following are recently introduced federal bills that may potentially affect community associations.

- **American Rescue Plan Act of 2021 (H.R. 1319)** – This bill provides additional relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses. This section establishes and provides

FY2021 funding for the Homeowner Assistance Fund, which provides assistance to mitigate the financial hardships associated with the COVID-19 pandemic. Specifically, grants are provided to states, territories, and tribes for preventing homeowner mortgage delinquency, defaults, foreclosures, loss of utilities, and displacements of homeowners experiencing financial hardship after January 21, 2020.

- *Became law March 3, 2021.*

- **Disaster Assistance Equity Act of 2021 (H.R. 5298)** – This bill makes common interest communities, such as housing cooperatives (co-ops) and condominiums, eligible for the same assistance from the Federal Emergency Management Agency (FEMA) as other homeowners. Specifically, the bill (1) adds definitions of *residential common interest community, condominium, and housing cooperative* to the Robert T. Stafford Disaster Relief and Emergency Assistance Act; (2) requires FEMA to issue rules for the removal of debris or wreckage from real estate owned by a residential common interest community resulting from a major disaster, and deems such removal to be in the public interest when a state or local government determines in writing that such debris or wreckage constitutes a threat to life, public health or safety, or the economic recovery of such community; and (3) provides for the repair of essential common elements of a condominium or co-op damaged by a disaster under FEMA's Federal Assistance to Individuals and Households Program.

- *Introduced September 20, 2021.*

- **Fair Accounting for Condominium Construction Act (H.R. 4061)** - This bill exempts certain residential construction contracts from the requirement to use the percentage of completion method of accounting. The *percentage of completion method* is a tax accounting method in which the revenues and expenses of long-term contracts are recognized as a percentage of the work completed in a particular period.

- *Introduced June 22, 2021; referred to the House Committee on Ways and Means.*

- **S. Res. 408** - A resolution designating October 2021 as "National Co-op Month" and commending the cooperative business model and the member-owners, businesses, employees, farmers, ranchers, and practitioners who use the cooperative business model to positively impact the economy and society.

- *Introduced October 6, 2021; passed by the Senate October 21, 2021.*

- **Coronavirus Homeowner Assistance Act (H.R. 1710)** – This bill establishes and provides FY2021 funding for the Homeowner Assistance Fund, which provides assistance to mitigate the financial hardships associated with the COVID-19 pandemic. Specifically, grants are provided to states, territories, and tribes for the purpose of preventing homeowner mortgage delinquency, defaults, foreclosures, loss of utilities, and displacements of homeowners experiencing financial hardship after January 21, 2020.

- *Introduced March 3, 2021; referred to the House Committee on Appropriations.*

- **Aid to Homeowners with Crumbling Foundations Act of 2021 (S. 1003)** – This bill requires the U.S. Dept. of Housing and Urban Development to provide grants for states to

assist residential building owners in repairing or replacing concrete foundations that have deteriorated due to pyrrhotite (an iron sulfide mineral linked to crumbling foundations).

- *Introduced March 25, 2021; referred to the Committee on Banking, Housing, and Urban Affairs.*
- **Crumbling Foundations Small Business and Homeowners Assistance Act of 2021 (S. 1028)** – This bill requires FEMA to award grants for states to assist homeowners, small-business owners, and condominium associations in preventing, mitigating, and repairing structural damage to concrete *foundations* that contain pyrrhotite.
 - *Introduced March 25, 2021; referred to the Committee on Homeland Security and Governmental Affairs.*

NEWS OF INTEREST

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.

- Multiple condominiums sustained fire damage in Virginia. Three units in a Virginia Beach condominium were damaged by fire in January, displacing five people. A condominium near Buckroe Beach in Hampton experienced a fire in April that damaged 12 units. In Norfolk, another condominium suffered what was described as a massive fire in April, causing owners to leap from buildings to escape the flames. As a result of a child using a lighter inappropriately, a Fairfax condominium caught fire and displaced six people; damages were estimated at more than \$270,000.
- A family in Prince William County has filed suit against its condominium association, alleging unsafe and unhealthy conditions. The family alleges the unit's foundation is disintegrating, there are large cracks in the floors, damage from a broken pipe remains unfixed, and the living room floods when it rains.
- An association in Franklin County has asked the local planning commission to rezone the community in order to restrict short-term rentals (e.g., Airbnb). It is presently zoned A1 agricultural, and the association hopes to obtain R1 residential zoning which would allow it to prohibit short-term rentals. In addition, the association created a covenant to address the short-term rental issue until the zoning change can be made. Two public hearings and a final vote by the local board of supervisors will be required before the rezoning can be approved.
- A common interest community manager in Campbell County, as part of a plea agreement, has admitted to stealing money from a POA. Starting in 2018, the manager began to defraud clients by obtaining access to their bank accounts and transferring funds from those accounts to his business accounts. To cover his tracks, the manager provided fraudulent bank account statements to his clients showing larger account balances. Sentencing is scheduled for January 2022.

- The U.S. Dept. of Agriculture assisted an association in Ashburn to rid itself of more than 150 vultures that had begun to roost in the area, using a variety of noise and light methods to frighten the vultures away. In addition, dead vultures were hung from trees as a scare tactic. The association had received complaints about the birds from owners concerned they were damaging rooftops, vehicles, and yards. A Blue Ridge Wildlife Center Director suggested that the best way to deter vultures is by keeping food and garbage sealed.
- Finally, solar panels made the news on several occasions this past year. One owner in Chesapeake was denied his request to install a solar panel when the association wrote that it could not be visible from a public right-of-way. The owner indicated he is pursuing legal action to address the matter.

STATUTORY AUTHORITY

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties

A. 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 Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;
2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;
3. Receive notices of final adverse decisions;
4. 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;
5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;
6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;
7. 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;
8. Monitor changes in federal and state laws relating to common interest communities;
9. 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
10. Carry out activities as the Board determines to be appropriate.

§ 54.1-2354.4. Powers of the Board; Common interest community ombudsman; final adverse decisions.

A. 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 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 mailing address of the Office. 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.

B. 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 pursuant to § 54.1-2354.2. 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.

C. 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.