

**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 2021-2022



Department of Professional and Occupational Regulation

9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, Virginia 23233
(804) 367-8500

<http://www.dpor.virginia.gov>

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, 2021, through November 15, 2022.

Office of the Common Interest Community Ombudsman
Heather S. Gillespie, Ombudsman
Department of Professional and Occupational Regulation
(804) 367-2941
CICOmbudsman@dpor.virginia.gov

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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, 2021, through November 15, 2022.**

With a return to the office and a lessening of Covid cases, things slowed down for the Office a bit this year. While the number of common interest community complaints decreased from last year, it was still significantly higher than prior years even if time-share complaints are not included in the calculations. The Office has always strived to be as responsive as possible to both phone calls and emails, and we successfully continued this over the past year.

As was the case last year and ever since the complaint process became a requirement under the Common Interest Community Ombudsman Regulations (“Regulations”), 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 Regulations. We provide resources for associations to better understand the complaint process requirements, and the Office reviews draft complaint procedures for adherence to the Regulations.

The complaint process is not a difficult one, yet associations, whether professionally managed or not, continue to have a challenging time carrying out the required steps of the process. Ultimately, if distilled to its simplest components, the complaint process requires three actions from an association: (1) acknowledge receipt of a properly submitted association complaint; (2) provide notice and consideration of the complaint; and (3) provide a final decision on the complaint. The Office acts as a one-stop complaint procedure resource for associations and will gladly explain the process and the expectations placed on an association by the Regulations. Despite our best efforts, the complaint process continues to require constant assistance and guidance from the Office. While the complaint procedure is driven by the Regulations, it is also imperative that associations carry it out correctly in order to ensure that a complainant can ultimately “appeal” a decision on a complaint to this Office by filing a Notice of Final Adverse Decision.

The Office continues to be extremely effective in obtaining compliance when a Determination stemming from a Notice of Final Adverse Decision finds that an association is in violation of common interest community law. There was only one instance this year where compliance could not be obtained, and that matter ultimately resulted in a Consent Order and monetary penalty approved by the Common Interest Community Board.

The Common Interest Community Board was tasked with creating a work group and a report as required by Senate Bill 693. This bill required the Common Interest Community Board to

review and report on the feasibility of allowing recordings to be submitted with Notices of Final Adverse Decision. The work group’s findings are provided later in this report. Senate Bill 740 required the Agency, rather than the CICB, to create a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. Once its work is completed, the work group will provide a report on its findings and make recommendations as appropriate.

OMBUDSMAN REGULATIONS & ROLE OF OFFICE

The Common Interest Community Ombudsman Regulations (18 VAC 48-70), 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.

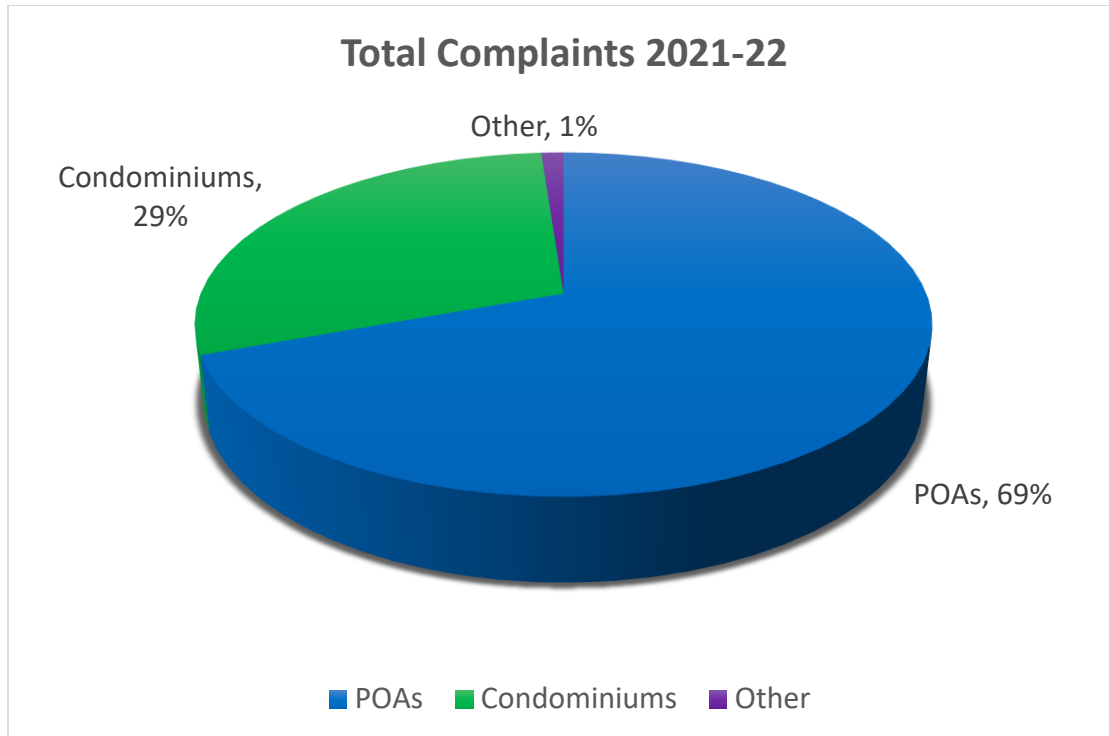
OFFICE ACTIVITIES

Complaint Statistics

During the 2021-2022 reporting period, the Office responded to 1,485 telephone calls and 2,318 email messages. The Office continues to respond as quickly as reasonably possible to all inquiries, and every effort is made to provide a response within 24 hours to any phone call or email.

Emails received by the Office decreased by 23% over last year's emails, but last year saw the single largest number of emails ever received by this office, and with the return to the workplace and school, it is not surprising to see a drop in emails. Somewhat surprisingly, however, phone calls increased by 9% over last year.

Last year, virtual meetings were a new option for associations, and we received many inquiries regarding the use of virtual meetings and how best to carry them out. This year, we heard from more owners who did not want to participate in a virtual meeting, but instead, wanted to meet in person. This creates a bit of a quandary, since the law allows for virtual meetings and thus if someone does not wish to participate, there is not really a viable option unless an association erects a screen in a room and allows people to gather there. This may need a bit of massaging by the General Assembly in the coming year to determine how to meet the demands of both those who wish to hold virtual meetings and those who do not wish to participate in them. Overall, virtual meetings appear to be a boon to associations and allow for greater participation by owners, which is always the ultimate goal of any association meeting.



The Office received 173 complaints¹ this year:

- 69% related to Property Owners’ Associations (POAs);
- 29% related to Condominium Unit Owners’ Associations; and
- 1% related to Non-CIC Associations

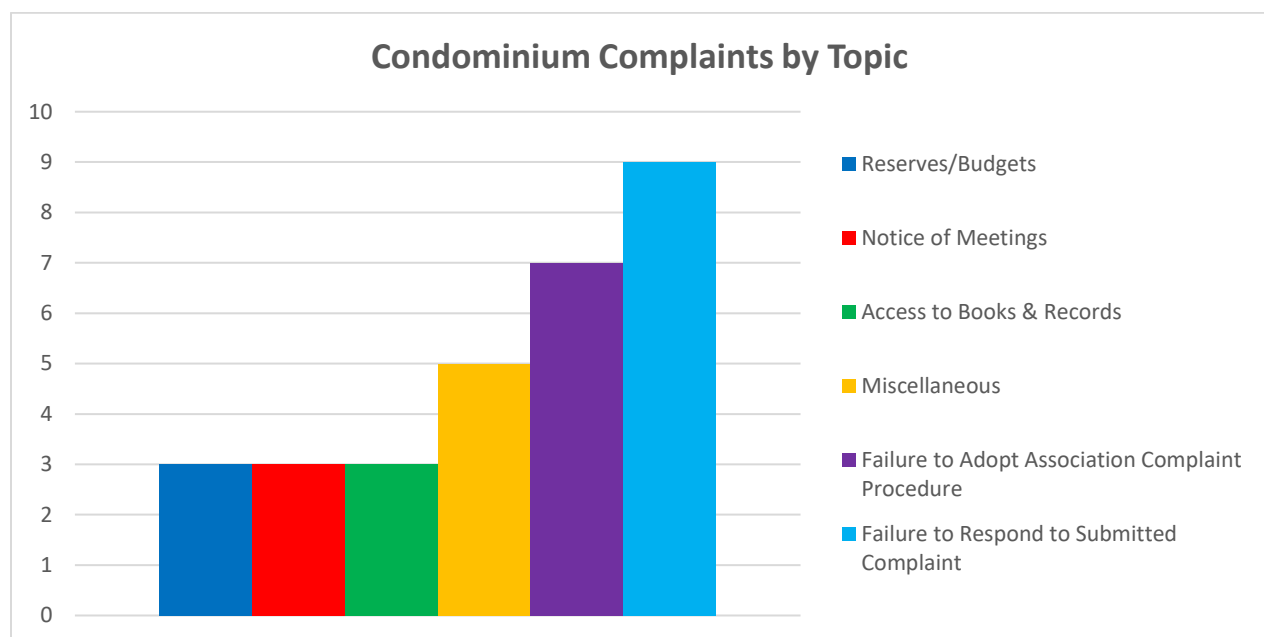
This was the first full year the Office did not respond to time-share complaints, and instead, focused solely on common interest community complaints and Notices of Final Adverse Decision. While the number of complaints received this year decreased by 19% as compared to last year (when this Office received the highest number of complaints in its fourteen years of existence), the total number of complaints was still significantly higher than what we have received in the past when time-share complaints are factored out.

Condominium complaints decreased by 18% this year, and POA complaints decreased by 17%. The past year’s numbers align more fully with complaint numbers from prior years, except for the fact that the Office only receives common interest community complaints now and does not receive time-share complaints, which often made up as many as 90 complaints received each year. Common Interest Community complaints require significantly more time than time-

¹ As used in this Annual Report, the term “complaints” includes Notices of Final Adverse Decisions (NFADs); complaints related to an association’s 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.

share complaints since nearly all time-share complaints were virtually identical and could be addressed with a standard letter. Common interest community complaints vary enormously and nearly every complaint requires a response specific to the subject matter of the complaint.

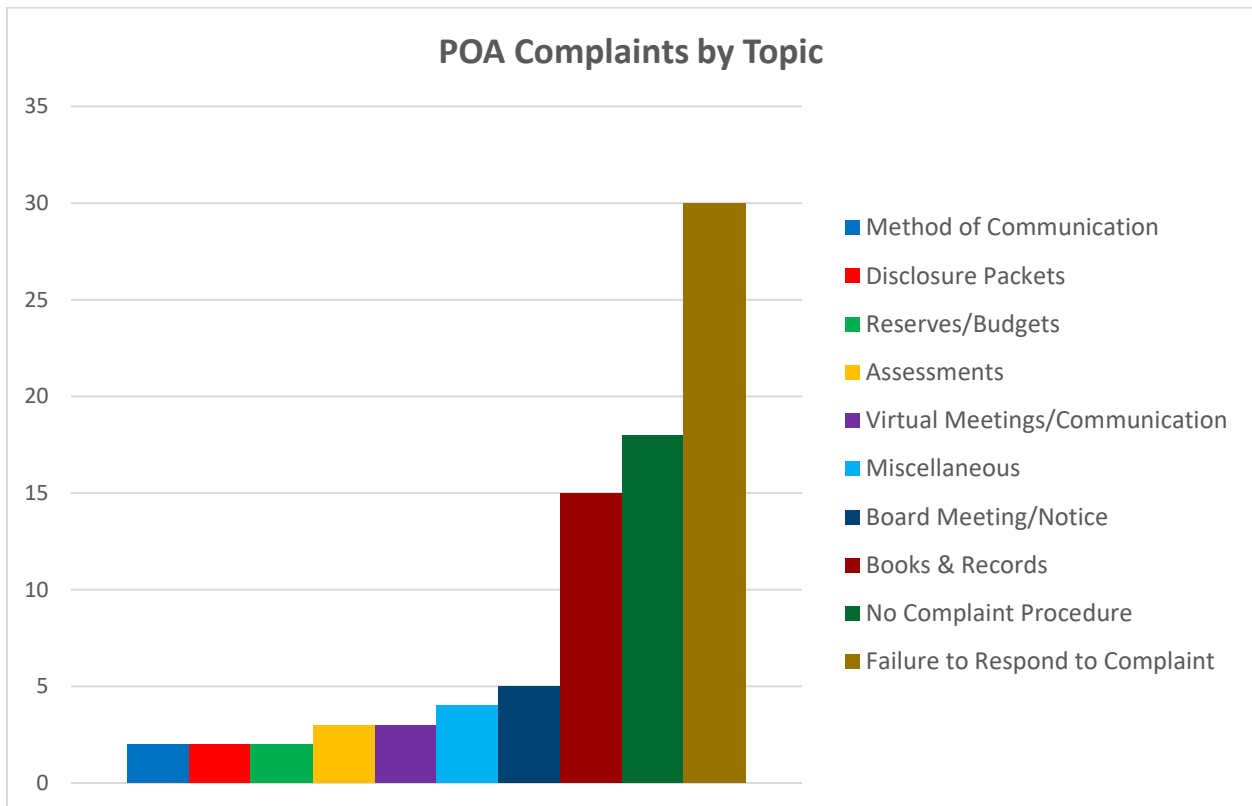
While the nation seems to have returned to its new normal, we do not believe associations are yet back to normal, or perhaps they are simply paving their way to a new normal. Many associations continue to avoid in-person meetings and other activities, and a lack of civility by both owners and board members seems pervasive at times. This Office has detected this lack of civility in its interactions with parties. While we cannot address civility in associations and we cannot dictate whether meetings are to be held in person or via electronic means, what this office can do is provide the guidance and information owners and board members need to better understand and abide by the common interest community laws of Virginia.



This year, like last year, saw that most condominium complaints were related to the association complaint process. Thirty percent of condominium complaints were related to an association’s failure to respond to a complaint submitted through the association complaint procedure. Twenty-three percent of condominium complaints alleged that an association had not even adopted an association complaint procedure. These numbers continue to be disappointing since the association complaint procedure requirements have been in place for a decade.

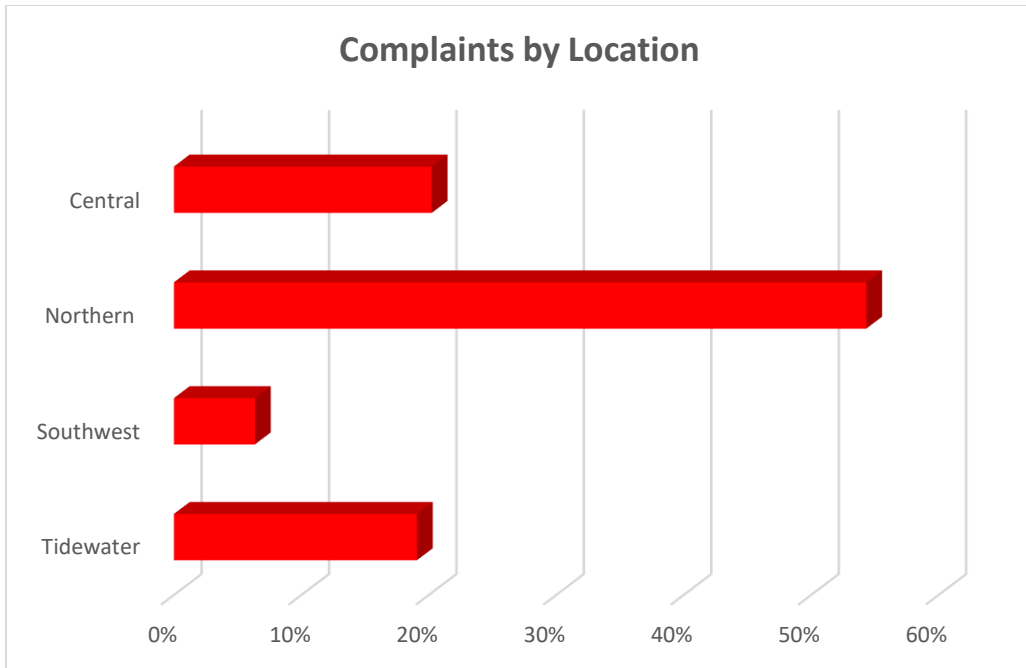
When an association fails to respond to an association complaint, the Office will contact the association and remind it of its obligation to respond in accordance with the Regulations. If an association has not adopted an association complaint procedure, the Office will reach out and ask that the association adopt a complaint procedure and provide it to the Office within two weeks. In both instances, obtaining compliance can often require lengthy communications, during which the process and the association’s obligations will be fully outlined, a review of draft complaint procedures may be conducted, and guidance on common interest community

law may be provided. In addition, because timelines for compliance are provided in every instance, the Office must regularly follow up to seek full compliance. Aside from the complaint process complaints, the most common complaints this year were about access to books and records and a lack of notice for meetings. Interestingly, there was a broad representation of allegations this year, with a total of eleven different Condominium Act topics identified in the submitted complaints.



POA complaints mirrored condominium complaints, in that the largest number were related to a failure to respond to a submitted complaint (36%) and a failure to adopt a complaint procedure (21%). The same guidance and advice regarding the complaint process is provided to POAs as the Office provides to Condominiums. A failure to provide members access to the books and records of the association was a major issue this year. Less frequent complaints topics included concerns about virtual meetings, lack of meeting notice, and assessments.

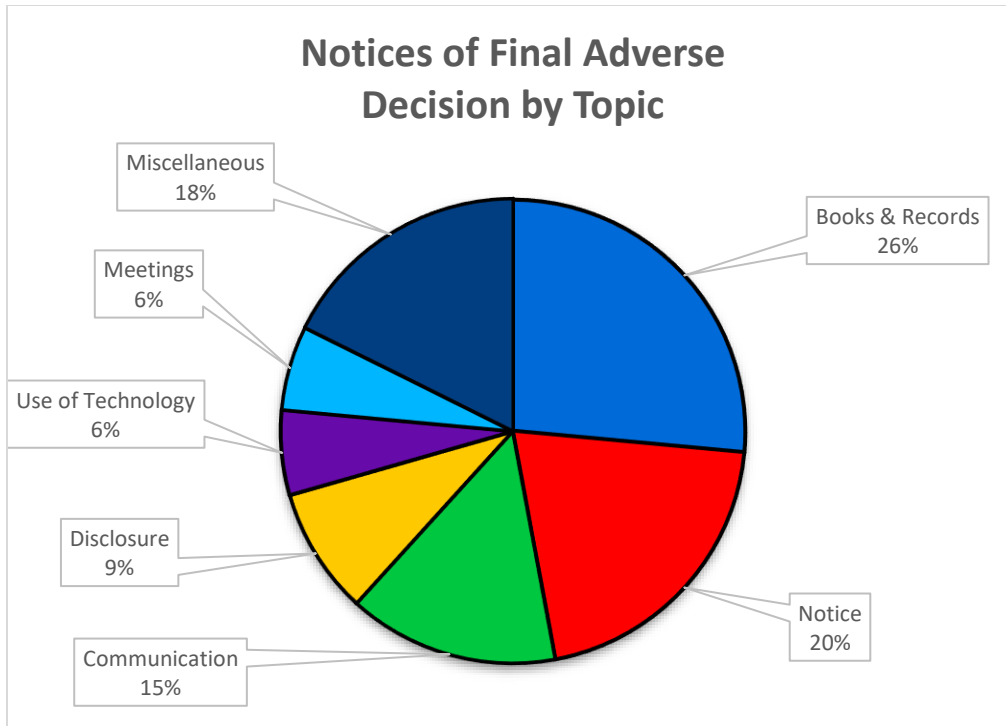
Northern Virginia accounted for 54% percent of all complaints received by the Office, with the remainder coming from the Central Virginia region (20%), the Tidewater area (19%), and Southwest Virginia (6%). The number of complaints from Northern Virginia decreased this year, as did complaints from Southwest Virginia, while both Central and Tidewater Virginia increased slightly.



Ombudsman Determinations

The number of NFADs received by the Office returned to a more “normal” thirty-six this year. NFADs generally contain multiple complaints, as was noted last year, which means the process of review and the drafting of the Determination can be time consuming and difficult.

This year saw very similar NFAD topics as we have seen in the past. Access to association books and records topped the list, with notice of meetings, method of communication, and disclosures following. There were some new NFAD topics this year, including failure to file an annual report (with the CICB), the right to serve on the board, and the use of technology.



The top concern in Notices of Final Adverse Decision were issues related to owners obtaining access to books and records of the association. These concerns were followed closely by alleged failures to provide notice of meetings and an inadequate or nonexistent method of communication. Interestingly, a majority of Determinations result in a finding that a complainant misunderstood the law and therefore had mistaken expectations as to how the association should act. While it is likely disappointing for complainants to receive a Determination from this Office that is not in their favor, Determinations serve as a learning tool for both owners and associations by providing an opportunity for each party to better understand common interest community law and its application.

One of the ongoing issues that we sometimes see when someone submits a NFAD is that they frequently fail to provide any evidence in their initial complaint to the association. Thus, the complaint, which subsequently becomes the basis for the NFAD, simply contains allegations with no evidence to support those allegations. Because the complaint must first go through the association complaint procedure before it arrives in our office, once we receive a NFAD, we cannot request evidence from the complainant since doing so would not provide the association to opportunity to review and respond to any new information being submitted to our office.

Individuals filing a NFAD will also include additional information pertaining to their complaint that was not part of the original complaint to the association. The Office cannot use this additional information as part of its review and decision since it essentially provides the complainant another “bite of the apple” and does not give the association an opportunity to respond to the additional information. NFADs also often stem from topics that were not

appropriate for the complaint procedure – meaning they do not pertain to common interest community law, but instead may be related to the governing documents of the association or some other area of civil law. In these cases, the Office cannot provide a Determination since it has no jurisdiction over anything other than common interest community law. Associations are not required to process such complaints through the association complaint procedure, but instead, can address them in whatever manner it chooses.

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>. It remains our goal to provide a searchable database to constituents in the future.

SENATE BILL 693

Senate Bill 693 required the Common Interest Community Board to review and report on the feasibility of allowing recordings to be submitted with Notices of Final Adverse Decision. The following is drawn directly from the report provided to the House Committee on General Laws, Senate Committee on General Laws and Technology and the Secretary of Labor on November 1, 2022.

Sections 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia establish the Office of the Common Interest Community Ombudsman (“CICO”) and the requirement for each common interest community (“CIC”) association to establish an internal complaint procedure to resolve complaints made by an association member or citizen (“complainant”) against the association. A complainant who receives an adverse decision from an association may file a notice of final adverse decision (“NFAD”) with the Common Interest Community Board (“the Board”). The NFAD is to include all records pertinent to the association’s adverse decision. The CICO reviews the NFAD to determine whether the association’s decision conflicts with laws and regulations governing CICs. Under applicable statute and Board regulations, an NFAD must be in writing.

Senate Bill 693, as introduced during the 2022 General Assembly session, proposed to amend the Code of Virginia to require that an NFAD filed with the Board include “...any video or audio recordings...” The original bill was amended. The amended bill directed the Board to “...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of Virginia.” The bill required the Board to:

- Identify pertinent statutory and regulatory amendments necessary to allow for the submission of recordings;

- Identify any impediments to the submission of recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act and other public records laws;
- Consider whether allowing the submission of recordings would assist the CICO in the performance of duties with respect to any NFAD;
- Solicit and consider public comments; and
- Report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.

The Board conducted the review with assistance from a committee comprised of common interest community attorneys, citizens residing in common interest communities, Board members, and the Common Interest Community Ombudsman. The committee concluded that § 54.1-2354.4 of the Code of Virginia would likely need amendment to clarify that audio and video recordings can be submitted as records pertinent to a decision. The Common Interest Community Ombudsman Regulations (18VAC48-70) would require significant amendment to provide the public with the requirements and processes for submitting audio and video recordings with NFADs. CICs would be required to amend their internal documents and policies in order to comply with these changes. Implementation of these changes by CICs are impediments that may not make such changes feasible.

The Department of Professional and Occupational Regulation (DPOR) has the technical capacity to receive and archive digital audio and video recordings, but would need to establish clear guidelines prescribing acceptable file formats and procedures for submission of recordings. DPOR would need to provide appropriate training and resources for its public records management staff to perform redactions of recordings in order to timely and appropriately comply with the Freedom of Information Act when requests for closed NFAD cases are received.

The CICO may be able to receive and review recordings, and DPOR's public records management staff may be able to fulfill public records requests, without the need for additional staff. Additional staff would be required if there are a high number of NFADs that include recordings.

The committee also concluded that allowing for submission of audio and video recordings would be contrary to the role and purpose of the CICO and the association complaint process as designed by the General Assembly. Moreover, allowing for submission of audio and video recordings would not assist the CICO in performing the duties required by statute, and would likely be detrimental to the performing of these duties. The committee further concluded there was no substantial evidence for a change, and no identifiable public problem that allowing for submission of audio and video recordings would address. Moreover, the committee concluded that allowing for submission of recordings to the CICO may result in unintended negative impacts to CICs.

Based on the committee's findings and conclusion, the Board recommends against any legislative or regulatory changes to allow for the submission of audio and video recordings with an NFAD.

SENATE BILL 740

After the horrifying loss of lives that took place in Florida last year when the Champlain Tower South Condominium collapsed, killing nearly 100 people, structural integrity has been at the forefront of conversation and legislation both here in Virginia and across the country. Federally, legislation has recently been introduced to make it easier to obtain financing for critical condominium repairs by allowing the Federal Housing Administration to insure condominium rehabilitation loans. Another bill recently introduced in Congress would allow special assessments for condominium building repairs to be financed over 20-30 years. Both these federal bills are discussed later in this report. Here in Virginia, Senator Scott Surovell introduced Senate Bill 740, which was passed into law by the General Assembly in April 2022.

Senate Bill 740 directs the Department of Professional and Occupational Regulation to establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. The bill directs the Department to report the work group's findings and provide recommendations, including any legislative recommendations, to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology no later than April 1, 2023.

The work group is composed of a broad swathe of professionals, including Local Government Representatives, CIC Manager Representatives, Owner Representatives, Insurance Specialists, Reserve Specialists, Banking Representatives, Community Association Attorneys, Developers, and Accountants. In addition, the work group has partnered with three Research and Community Engagement Specialists to assist the agency in organizing and carrying out the meetings, research, and final report and to provide a deeper knowledge base to this project. The Research and Community Engagement Specialists are: The Center for Regional Analysis at George Mason University, The Virginia Housing Research Center at Virginia Tech, and The Dragas Center at Old Dominion University.

Three meetings of the work group have been held so far. At the first meeting, on August 5, 2022, there was an overview of the scope of the work to be done by the work group, an overview of resources available, a presentation by Dawn Bauman, Senior Vice President of Government and Public Affairs of the Community Institute, and topic breakout sessions. The first meeting was held in Richmond at the Department of Professional and Occupational Regulation.

The second meeting, held October 19 in Roanoke, had presentations regarding reserve studies, board governance, and condominium and household characteristics. Following a work group discussion, the attendees were split into three policy question breakout groups to further discuss reserve studies, board governance, and conditions and circumstances.

At the work group's third meeting, held in Arlington on November 16, presentations included structural integrity, liability, insurance, and finance. After a discussion among the work group

members, breakout groups dug in more deeply and discussed board responsibility, liability and insurance, criteria for structural integrity, and financing and rehabilitation.

The fourth meeting will be held in Newport News in February, and a final meeting will be held in Richmond in March. The work group will be responsible for providing a report of its findings and recommendations, including any legislative recommendations, to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology no later than April 1, 2023.

EDUCATION & OUTREACH

The Ombudsman provided only a few presentations this past year. There seemed to be fewer speaking opportunities in general, likely a lingering result of the pandemic and the decrease in in-person gatherings. Because of the decrease in speaking opportunities over the past years, the Office is moving toward web-based outreach going forward. This would not only be more time and cost effective, but it would also be available to a much larger number of constituents and could be accessed at any time.

The Agency is working toward a substantial technology upgrade in the near future which should pave the way for this office to create a strong online presence. Some of the goals for the coming year include the creation of a newsletter to help educate constituents on the law and issues arising in associations and this office. We also hope to create short teaching videos, seminars, a strong FAQ section, and possibly some form of online forum for questions and answers. To this end, the Office will be filling its administrative staff position to allow the Ombudsman to spend more time on outreach via the internet.

The Ombudsman was a non-voting member of the workgroup that reviewed Senate Bill 693 and is currently a member of the Senate Bill 740 Workgroup. The Ombudsman will also be heavily involved in this year's review of the CIC Ombudsman Regulations (the review was initially planned for last year but was put on hold due to the legislation that resulted in the formation of the two work groups).

The Ombudsman has always served and will continue 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.

CONSTITUENT EXPECTATIONS

The Ombudsman provides a significant amount of counseling, guidance, and information to a very broad group of constituents. Last year, the Ombudsman responded to 1,485 phone calls, many of which required lengthy conversations, research, and follow up with an email

containing links and further guidance. In addition to the phone calls, the Ombudsman also responded to 2,318 emails related to common interest communities. These also frequently require research and intense review, and oftentimes a follow up phone call. While these numbers did drop from the prior year, they are still well above many other years.

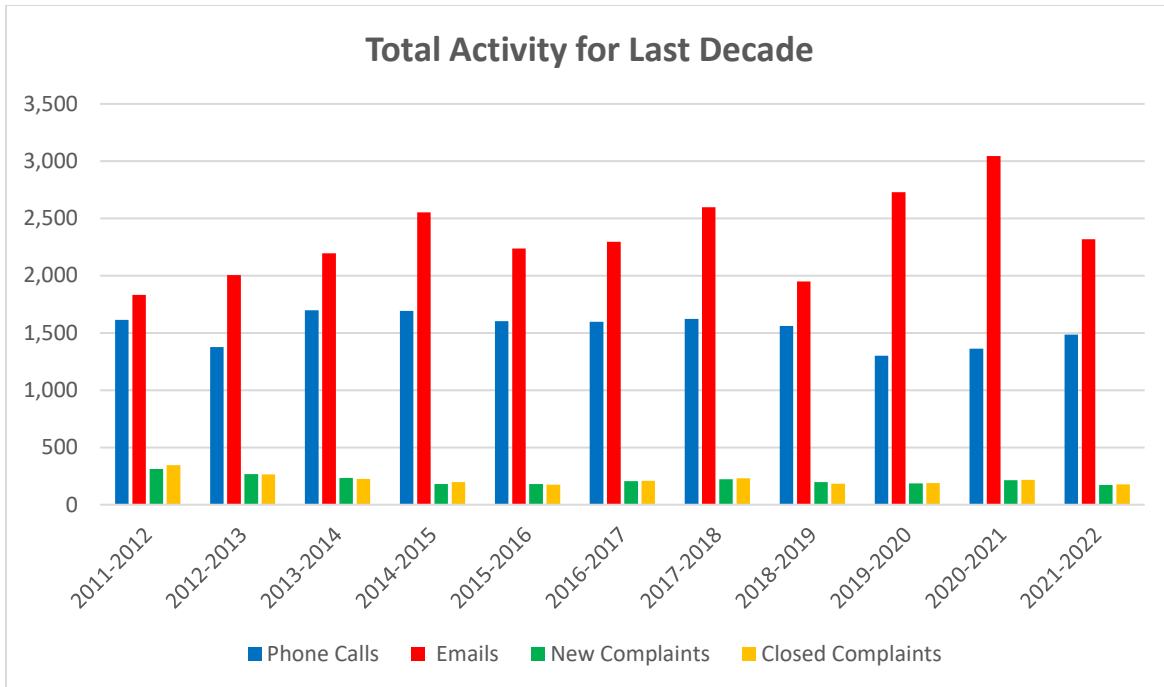
Like the prior year, the Office dealt with some particularly difficult and aggressive constituents this year who were dissatisfied with the responses they received from the Office. In all these cases, the problem was not a failure to respond by the Office, but instead, a dissatisfaction on the part of the constituent with the authority of the Ombudsman and the limits of her jurisdiction. In many instances, communications in these situations are lengthy.

As has been noted in past reports, the Office continued to receive inquiries and field concerns related to water and fire damage in condominiums, which are not issues that fall under the authority of the Ombudsman. The Ombudsman works closely with the Fair Housing Office and frequently forwards complaints and inquiries related to discrimination and reasonable accommodation to that office. The Office also hears from constituents alleging harassment, bullying, noise concerns, and other civil law matters. Because the Office has no authority to address these types of concerns, we suggest that the constituents consult with an attorney since it is a civil (or possibly criminal) matter.

Associations struggle to properly implement virtual meetings, which require the association to adopt guidelines for such meetings. They also have a hard time figuring out the best way to hold elections online and often default to non-virtual methods. While virtual meetings appear to be making it much easier for associations to hold meetings and for owners to attend them, the Office frequently hears from owners who do not want to attend virtual meetings and believe their association should hold in-person meetings.

The Office continues to work closely with associations that have not adopted an association complaint procedure. The complaint procedure became a requirement a decade ago, and yet associations continue to struggle to adopt a complaint procedure and to implement it properly once it is in place. The Office spends a great deal of time counseling association boards on how the complaint process works and what must be contained in an association complaint procedure. The complaint process videos that we made available online have been helpful, but nothing works as well as a phone call.

Every day the Office does an outstanding job of meeting constituent expectations. Calls are returned promptly, so much so that people are often surprised to hear back so quickly. The office responds to emails carefully and thoroughly and provides thoughtful determinations on NFADs. In truth, the only time we do not meet the expectations of constituents is when their expectations exceed the authority or jurisdiction of this office.



LEGAL DEVELOPMENTS

State Legislation

The 2022 General Assembly session was again unusual, in that there were very few bills related to common interest communities. While few in number, two of the bills resulted in the formation of work groups to study the subject matter and report their findings.

Bill No.	Patron	Description
SB 197 HB 470	Montgomery Bulova	Clarifies the prohibition on property owners' associations and unit owners' associations pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.) and the Virginia Condominium Act (§ 55.1-1900 et seq.), as the case may be, refusing to recognize a licensed real estate broker that is designated by the lot owner or unit owner as such lot owner's or unit owner's authorized representative, provided that the property owners' association or unit owners' association is given a written authorization signed by the lot owner or unit owner designating such licensed individual as his authorized representative and containing certain information for such designated representative. The bill also expands the list of authorized persons to whom a seller or seller's authorized agent may provide a written request for the delivery of the association disclosure packet or resale certificate. The bill also contained a technical amendment.

SB 693	Petersen	Directs the Common Interest Community Board (the Board) to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision. The bill requires the Board to report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before November 1, 2022.
SB 740	Surovell	Directs the Department of Professional and Occupational Regulation (the Department) to establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. The bill further directs the Department to report the work group's findings and provide recommendations, including any legislative recommendations, to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology no later than April 1, 2023.
HB 450	Bennett-Parker	Prohibits a person from parking a vehicle not capable of receiving an electric charge or not in the process of charging in a space clearly marked as reserved for charging electric vehicles. A violation is subject to a civil penalty of no more than \$25.
SB 217	McPike	Provides that all financial books and records shall be kept in accordance with generally accepted accounting principles. Current law states that all financial books and records shall be kept in accordance with generally accepted accounting practices. <i>This bill was continued to the 2023 Session in the Committee on General Laws and Technology.</i>

Virginia Court Cases

As we have seen in prior years, there was a limited number of common interest community law cases in Virginia this year. The cases below have some bearing on common interest community law.

- **United States of America v. Kotzev, United States District Court, E.D. Virginia, Alexandria Division, January 2022**

The Defendant owned a condominium and a parking space. He had a niece and nephew in Poland to whom he agreed to transfer the condominium and parking space in exchange for support from his them in his old age. The Defendant did not record a deed or contract demonstrating the promised conveyance. A decade later the Defendant was audited by the IRS and denied having any bank accounts in foreign countries. The IRS had documentation that suggested otherwise. The Defendant subsequently executed

and recorded a Deed of Gift to his niece and nephew conveying the condominium and parking space. He continued to live in the condominium and use the parking space, paying all fees, taxes, and other costs associated with the property. Several years later, the Defendant submitted a payment of nearly three quarters of a million dollars to the IRS, and had a judgment entered against him for nearly \$1.25 million several months later after the IRS filed suit regarding his failure to disclose funds in foreign banks. This case was brought by the United States to enforce the judgment lien it had on the condominium and parking space. The plaintiff sought summary judgment based on its belief that the Defendant's transfer of the properties was fraudulent. The Plaintiff believed the transfer to the niece and nephew was both a constructive fraudulent transfer and an actual fraudulent transfer. The Court found that "the undisputed factual record leaves no plausible doubt that the December 2013 transfer met the elements of both constructive and actual fraud under Virginia law." The court granted summary judgment to the Plaintiff.

- **Letellier v. The Atrium Unit Owners Association of Arlington, Inc. Arlington County Circuit Court, February 2022**

Plaintiff sued the association for \$22 million after she was assaulted in her condominium and suffered bone fractures and severe post-traumatic stress disorder as a result of a physical and sexual assault. The assailant was seen prior to the assault when he knocked on another door and claimed to be there for a maintenance check. The resident contacted the front desk and was told not to open the door unless resident received a call from the front desk. Shortly thereafter, a similar scenario happened on another floor. This time the front desk person set out to investigate and a minute later a third caller told her she heard someone screaming. When the front desk person arrived, she saw the Plaintiff running from her unit, screaming. The assailant had again knocked and pretended to be a maintenance person providing maintenance services. The case before the court was whether the association failed to provide the security it had promised and whether it had breached the standard of care. The jury ultimately found for the defendant in the case.

- **Depaz v. Council of Co-Owners of the Westerlies Condominium Association, Court of Appeals of Virginia, October 2022**

The Appellant filed a complaint against her association alleging a violation of §55.1-1915 of the Virginia Condominium Act. Specifically, she alleged that the association failed to maintain the common elements of the association as required by the condominium instruments. She also alleged that this failure to maintain resulted in water damage to her units. The Fairfax Circuit Court granted the Appellees a Plea in Bar and dismissed the Appellant's complaint due to the expiration of the statute of limitations. The Appellant appealed the decision because she disagreed with the lower court and the date of accrual of her cause of action. The Court of Appeals held that oral argument was unnecessary and "the appeal is wholly without merit." This finding was based on the Appellant's failure to file a transcript with the court, not on the substance of her appeal.

- **Ocean Shore Condominium Association v. Virginia Beach City Council, Supreme Court of Virginia, November 2022**

This case came to the Virginia Supreme Court from the Virginia Beach Circuit Court. Appellants, consisting of two condominium associations and two individuals, had sought a declaratory judgment from the Circuit Court regarding the expansion of a retirement community in Virginia Beach. Their concern was primarily related to the 270-foot tower to be erected 50 feet from Ocean Shore Condominium. The Appellants argued that the tower would place two of the condominium buildings in shade for up to five hours a day, and another building would be impacted as well. The Appellants also believed the height of the tower would be a detriment to migratory birds, and that the property could not safely bear the tower. The Appellants believe the expansion should not have been approved by the locality. Most of the arguments brought by the Appellants were dismissed by the Circuit Court judge. On appeal, the Supreme Court found that “there [was] no reversible error by the Circuit Court.”

Federal Developments

Following are some recently introduced federal bills that may affect community associations. Several bills have carried over from the prior year and are still under consideration.

- **Inflation Reduction Act of 2022 (H.R. 5376)** – This bill provides funding, establishes programs, and otherwise modifies provisions relating to a broad array of areas, including education, labor, childcare, health care, taxes, immigration, and the environment. (The bill is commonly referred to as the Build Back Better Act.) For example, the bill provides funding for:

- management of the National Forest System;
- job placement and career services;
- safe drinking water, energy-efficiency, and weatherization projects;
- electric vehicles and zero-emission, heavy-duty vehicles;
- public health infrastructure and supply chain resiliency;
- housing, rental, and homeowner assistance programs;
- cybersecurity programs;
- tribal infrastructure, housing, environmental, and health programs;
- wildfire prevention, drought relief, conservation efforts, and climate change research;
- small business assistance and development;
- transit services and clean energy projects in low-income communities; and
- infrastructure and administration of the Department of Veterans Affairs.

Introduced September 2021, passed the House November 2021, passed the Senate, and became law in August 2022.

- **Securing Access to Financing for Exterior Repairs (SAFER) in Condos Act of 2022 (H.R. 7532)** – A summary is in progress, but the official title as introduced is “[t]o expand the section 203(k) rehabilitation and title I property improvement loan programs of the

Department of Housing and Urban Development to authorize such loans to be made to low-income families residing in condominium units to cover the costs of special assessments imposed for repair or replacement of common areas, systems, and features, and for other purposes.” *Introduced April 2022 and referred to the House Committee on Financial Services.*

- **Fueling Affordable Insurance for Today's Homeowners (FAITH) Act of 2022 (H.R. 7643)** – This bill establishes the Natural Disaster Risk Reinsurance Program within the Department of the Treasury. States may voluntarily participate in the program. The program provides payments to states for damages from a natural disaster not covered by the National Flood Insurance Program for amounts in excess of trigger amounts. These trigger amounts are calculated by the National Academy of Sciences. States must present a plan that ensures the coverage of losses by insurers not exceeding the trigger amount. States must also pledge to repay the full amount provided by the program within 10 years. *Introduced May 2022 and referred to the House Committee on Financial Services*
- **Rapid Financing for Critical Condo Repairs Act of 2022 (H.R. 8304)** – A summary is in progress, but the official title as introduced is “[t]o authorize the Secretary of Housing and Urban Development to insure loans made to condominium associations to finance repair or replacement of common areas, systems, and features, and for other purposes.” *Introduced July 2022 and referred to the House Committee on Financial Services.*
- **Housing Oversight and Mitigating Exploitation (HOME) Act of 2022 (H.R. 8360)** – A summary is in progress, but the official title as introduced is “[t]o protect consumers from price-gouging of residential rental and sale prices, and for other purposes.” *Introduced July 2022 and referred to the House Committee on Financial Services.*
- **HOPE for HOMES Act of 2021 (S. 1768)** – This bill provides support for energy efficiency upgrades in homes. Specifically, the bill directs the Department of Energy (DOE) to establish a grant program that supports training on how to efficiently retrofit homes. In addition, DOE must establish a Home Energy Savings Retrofit Rebate Program to provide rebates for homeowners to invest in energy efficiency improvements. *Introduced May 2021, referred to the Committee on Finance, Hearings held May 2022, Committee on Banking, Housing and Urban Affairs.*
- **National Flood Insurance Program Reauthorization and Reform Act of 2021 (S. 3128)** - This bill generally revises the National Flood Insurance Program (NFIP) and reauthorizes the program through FY2026. The bill addresses NFIP coverage, cost, and availability, including by:
 - generally prohibiting the Federal Emergency Management Agency (FEMA) from raising certain premiums, surcharges, and fees more than 9% a year for five years;

- revising flood insurance coverage limits;
- establishing a means-tested program to provide financial assistance to low-income households through policy discounts; and
- revising standards and certification requirements for flood insurance rate maps.

The bill also revises administrative provisions of the NFIP, including by:

- allowing for the continuous operation of the NFIP during a lapse in appropriations, and
- prohibiting the Department of the Treasury from charging FEMA interest for NFIP debt for five years.

The bill sets forth requirements for Write Your Own companies related to reimbursements, agent commissions, and penalties for underpayment of claims.

The bill establishes state or tribal government revolving funds for flood mitigation activities and also provides for loans, grants, and other incentives regarding mitigation. *Introduced November 2021, Hearings held June and August 2022, Committee on Banking, Housing and Urban Affairs.*

- **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:
 - adds definitions of *residential common interest community*, *condominium*, and *housing cooperative* to the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
 - 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
 - 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 2021 and referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

NEWS OF INTEREST

The Ombudsman tracks articles related to Virginia 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 items gleaned from media reports over the past year which may be of interest to stakeholders.

- While not a Virginia- based news item, two employees, including an on-site manager at an Atlanta, Georgia condominium were shot and killed in August by a woman who lived in the community. Another employee of the association was injured during the shooting. Owners in the community described the shooter as a disgruntled condominium owner. She was apprehended later the same day. This news event struck a chord for common interest community managers in Virginia and across the country.
- Several children were injured in a fire at a daycare in a Portsmouth townhouse that resulted in a grand jury indictment for the owner of the daycare. Eight charges were for child abuse or neglect, eight were for child endangerment and three for unlawful wounding. According to eyewitnesses, five children jumped from the building into a waiting man's arms.
- A Falls Church condominium was partially evacuated when a steel beam in the building was found by an engineering firm to be completely corroded. According to news reports, owners had been reporting the presence of cracks in the building for some time and had expressed their concerns to management. The association will be holding a meeting in November to discuss plans for repair.
- A pending lawsuit in Charlottesville will determine whether an association can build a third phase of a condominium even though it is not the original declarant. An owner in Phase II of the condominium has sued the condominium association because he believes he has been harmed by the association's decision to build the third phase, since it will decrease the value of his condominium and the community by blocking portions of the panoramic view. The owner argues that the expansion rights for the condominium ended in 1998 unless all owners agree otherwise. The association believes that only 67% of the owners must agree.
- The Warren County Board of Supervisors voted to permit the termination of a management agreement with a local property owners' association in its sanitary district. The county managed the sanitary district and collected taxes for maintenance. The association asked to terminate the agreement when they were unable to obtain financial statements from the county. The county is creating an advisory committee to look more closely at the termination and the impact it will have.

- An unusual condominium is being built in Winchester. Instead of housing people in units, this condominium will house planes in hangars at the Winchester Regional Airport. The project will take up to six years and plans are for 32 heated, insulated hangars, each with a bathroom and access to the airfield. Numerous other amenities will be provided such as an internet service.
- A developer is suing a property owners association after the association said it would be blocking access by the public to two streets that lead to a wedding venue owned by the developer. The association argues that the existing easement does not provide for access by the public and is seeking a licensing fee from the developer in order to access the roads. The developer believes it has always had a right of access to the roads. A judge issued a preliminary injunction on 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.