

**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 2023-2024



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 1, 2023, through October 31, 2024.

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TABLE OF CONTENTS

Executive Summary	1
Ombudsman Regulations & Role of Office	2
Office Activities	3
Constituent Response Statistics.....	3
Complaint Statistics.....	4
Ombudsman Determinations	7
Constituent Services	10
Education and Outreach	12
The Virginia Resale Disclosure Act	13
Legal Developments	13
State Legislation	13
Virginia Court Cases	16
Federal Developments.....	18
News of Interest	20
Statutory Authority	22

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 1, 2023, through October 31, 2024.

The Office, like last year, continues to experience a high number of inquiries as well as complaints, including Notices of Final Adverse Decision (NFAD). The high volume of emails and phone calls keeps the Office extremely busy, as most contacts require review, research, and/or lengthy discussions of issues.

Like past years, many associations continue to struggle to adopt association complaint procedures and to respond to submitted association complaints in a manner that fully complies with the Common Interest Community Ombudsman Regulations (Regulations) that were adopted in 2012. As a result, the Office dedicates significant resources to aiding and encouraging associations to obtain compliance and implement a proper complaint process that ensures association members know how to file complaints with their associations and when to expect to receive decisions by their association Boards.

Establishing a proper complaint process is not a difficult task. Nonetheless, many associations, whether professionally managed or not, continue to have difficulty carrying out the required steps of the process. The complaint process components are straightforward. First, the association must establish a complaint form and a submission process in accordance with the regulatory guidance. Once those are shared with the association members, the complaint process requires three actions from the association: (1) acknowledge receipt of a complaint within seven days of receiving a properly submitted association complaint; (2) provide the complainant with the notice of the date, time, and location that the matter will be considered by the association; and (3) provide a final decision on the complaint that comports with regulatory requirements. The Office, as it has in past years, offers explanations and resources to associations and their members regarding the complaint process and the expectations placed on an association by the Regulations, 18 VAC 48-70-50.

Similarly, the Office continues to see many association NFADs that do not comply with regulations. Typically, these noncompliant NFADS omit multiple required components of an NFAD as specified in the regulations, such as: (1) Date of issuance; (2) Specific citations to applicable association governing documents, laws or regulations that support the final determination; (3) The association’s registration number; (4) The name and license number of the common interest community manager, if applicable; (5) The complainant’s right to file a Notice of Final Adverse Decision with this Office; and (6) The necessary contact information of this Office. Regulations, 18 VAC 48-70-50. A properly drafted Notice of Final Adverse Decision

could reduce the growing numbers of complaints to the office. It could also satisfy some complainants or inform them that they do not have a common interest community complaint.

This past year, the Office did not refer any matter to the Common Interest Community Board for enforcement. The Office referred three cases for investigation, but those matters were resolved without any further action.

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 new or direct complaints from association members or owners.

Notices of Final Adverse Decision, as described in § 54.1-2354.4 and the Regulations, are appropriate only after an owner or citizen submits a complaint to an association through the mandatory association complaint procedure and then receives the association’s decision on that complaint. Complaints subject to review by the Ombudsman are restricted by law and regulation to allegations of violations of common interest community law or regulations.

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 filing fee or a fee waiver request).

If a complainant fails to receive a response from the association in a reasonable timeframe, or if 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 for 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

Constituent Response Statistics

During the 2023-2024 reporting period, the Office responded to 1,122 telephone calls and 2,420 email messages. The Office's goal is 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. We fell short of this goal during the middle part of the reporting year when the Office was without an Ombudsman and its support staff. The Office did, however, work through its backlog once it returned to being fully staffed. Currently, the Office has returned to its practice of promptly responding to nearly all inquiries within one business day.

The number of phone calls, emails and complaints received by the Office are substantial. Although this year's numbers are lower than those of last year, they are still significantly high, which presents challenges for the Office's two staff.

Most notable is the number of NFADs – 69 – received by the Office this year, which is 9% higher than last year. The NFADs subjects included the normal issues about meetings, access to records, and communications. But the Office also was presented with more novel issues such as electronic vehicle charging stations, Airbnb (short-term) rental, and solar energy collection devices. We have also had several instances of boards not issuing their final decisions in the appropriate format as called for by statute and regulations.

The Office's Administrative Coordinator is now responsible for the initial review and response to most of the phone calls and emails that come into the Office (other than those that come directly to the Ombudsman). Further, this staff person assists with carrying out our efforts to bring associations into compliance when they have failed to respond to an association complaint or have not adopted an association complaint procedure. The Ombudsman continues to be responsible for reviewing and responding to Notices of Final Adverse Decision (NFADs).

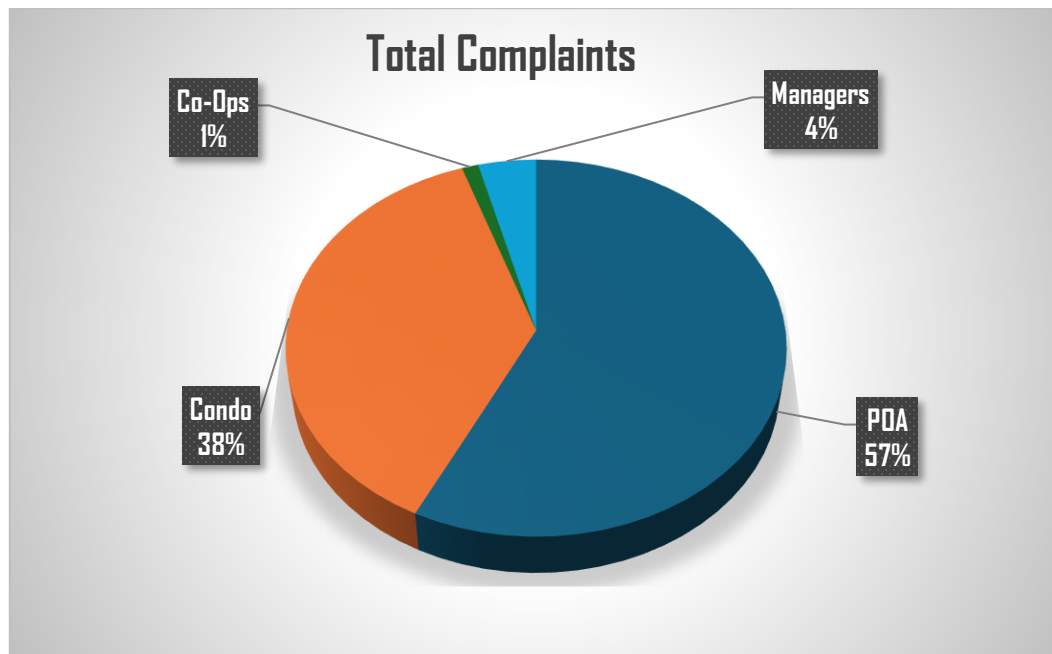
Due to the legislation passed in recent years, several new requirements have been codified that impact the Office. Changes to §54.1-2354.3 and §54.1-2354.4 of the Code of Virginia allow, but do not require, the Ombudsman to refer Notices of Final Adverse Decision directly to the Common Interest Community Board (CICB). To maintain continuity, the Ombudsman has not referred any NFADs to the CICB over this past year. New changes also require the Office to provide its determinations to both the governing board and the association's common interest community manager, if applicable. This has proven to be a challenging task at times since the Agency does not always have contact information for both. We hope to rectify this challenge with updated Annual Report and Registration Application forms in the coming year that will specifically request such information. New statutory language also requires that if, within 365 days of issuing a determination that an association was in violation of common interest community law or regulation, the Ombudsman receives a subsequent NFAD for the same

violation, the Office must refer the matter to the CICB, and it must maintain data on referrals made to the CICB.

Virtual meetings continue to be an issue for owners and associations, with the Office receiving many inquiries regarding associations that chose to hold virtual rather than in-person meetings. As discussed last year, this creates a bit of a conundrum since associations can, under current common interest community law,¹ hold meetings that are either fully or partially held by electronic means. If an association chooses to hold a meeting fully electronically, such decision can preclude any form of in-person meeting. Based on our anecdotal information, meetings held via electronic methods seem to be better attended since it is often easier for an owner to appear virtually than it is to appear physically at a meeting, and meetings seem to be held more frequently and regularly.

Complaint Statistics

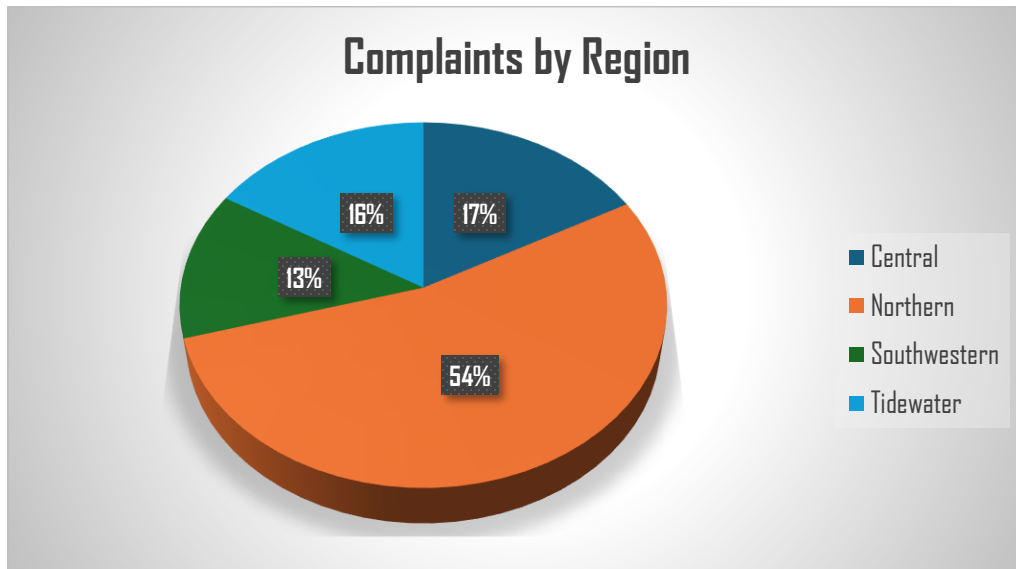
Over the 2023-2024 reporting cycle, the Office again experienced a higher-than-average number of complaints, receiving 171 complaints.²



¹ Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall 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 board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

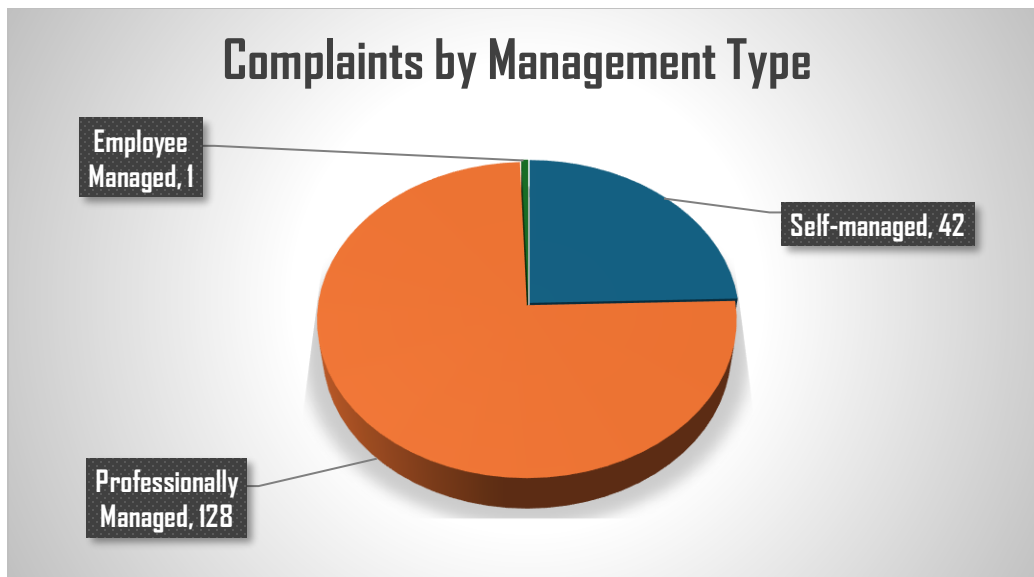
² As used in this Annual Report, the term "complaints" includes Notices of Final Adverse Decisions (NFADs); complaints related to an association failure to adopt a complaint procedure or respond to a submitted complaint; and complaints that have been improperly submitted directly to the Office when they should have been submitted through an association's internal complaint process.

A vast majority of the complaints (95%) focused on issues at either condominiums or property owners' associations. Slightly over half of the complaints originated from the Northern Virginia region, which was the case last year as well. While the Office had a slight decrease in the percentage of cases from both the Tidewater and Central Virginia regions compared to last year (minus 4% and 5%, respectively), there was an increased volume of complaints from the Southwest Virginia region over last year (13%, up from 5%).



Management Type

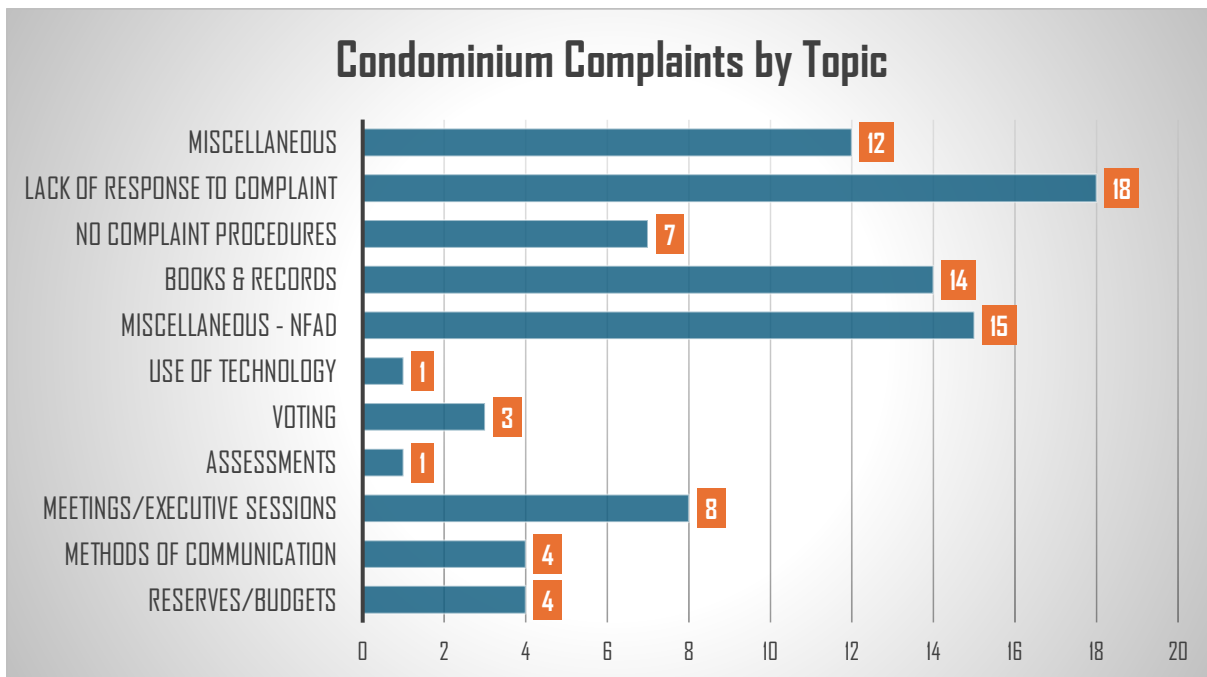
As for the breakdown by management type, professionally managed associations were the source of the most complaints received by the Office. Self-managed properties ranked second in this category. Notably, the Office only received one complaint from an association that is employee managed.



The Office continues to receive a significant number of complaints outside of its jurisdiction, especially regarding discrimination, civil issues over property damages, etc. Although the Office is limited in the guidance it can provide for matters outside of its authority, it is committed to providing excellent constituent services by providing information to complainants that may assist the citizens. Where appropriate, the Office refers allegations of discrimination to the appropriate government agency with jurisdiction over those matters. Similarly, the Office will also direct citizens to consult attorneys for matters that appear to be civil or their local Commonwealth’s Attorney if an issue is criminal in nature.

Condominium Complaints

Of the 171 complaints received by the Office this year, 65 were related to condominiums. The primary topics raised in these complaints were complaint procedure issues, access to books and records, meetings/executive sessions, and methods of communication. There were a variety of topics raised in the Miscellaneous – NFAD category, including issues with governing documents, amending the declaration, an alleged illegal sale of property, and spraying pesticides, among others.

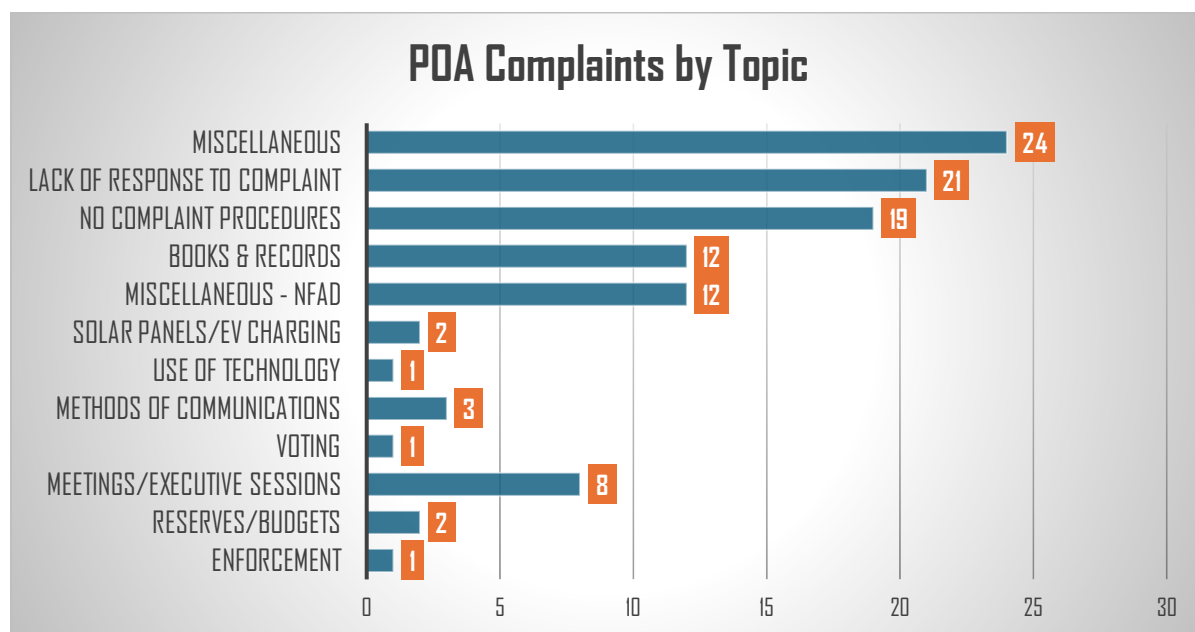


The most often raised topics in complaints involving condominiums were the lack of a complaint procedure and the failure to respond to a complaint. If an association fails to respond to a submitted complaint, that means the association has a complaint procedure in place but has failed to adhere to it. There will certainly be occasions when a complaint is improperly submitted. Based on the complaints the Office received, however, there are many instances where many condominium associations are simply not carrying out their responsibilities under the

Regulations and their own complaint process. Unlike property owners’ associations, most condominium associations are professionally managed. So, whether establishing a proper complaint process or responding appropriately to a complaint, a knowledgeable common interest community manager should have no difficulty helping an association navigate the requirements of the CIC Regulations.

Property Owners’ Association Complaints

The Property Owner Association (POA) complaints received by the Office covered a wide range of topics. The largest grouping of complaints was related to an association’s failure to adopt a complaint procedure and failure to respond to a submitted association complaint. As with condominiums, the goal is stronger compliance with the CIC Regulations, thus leading to fewer of these types of complaints.



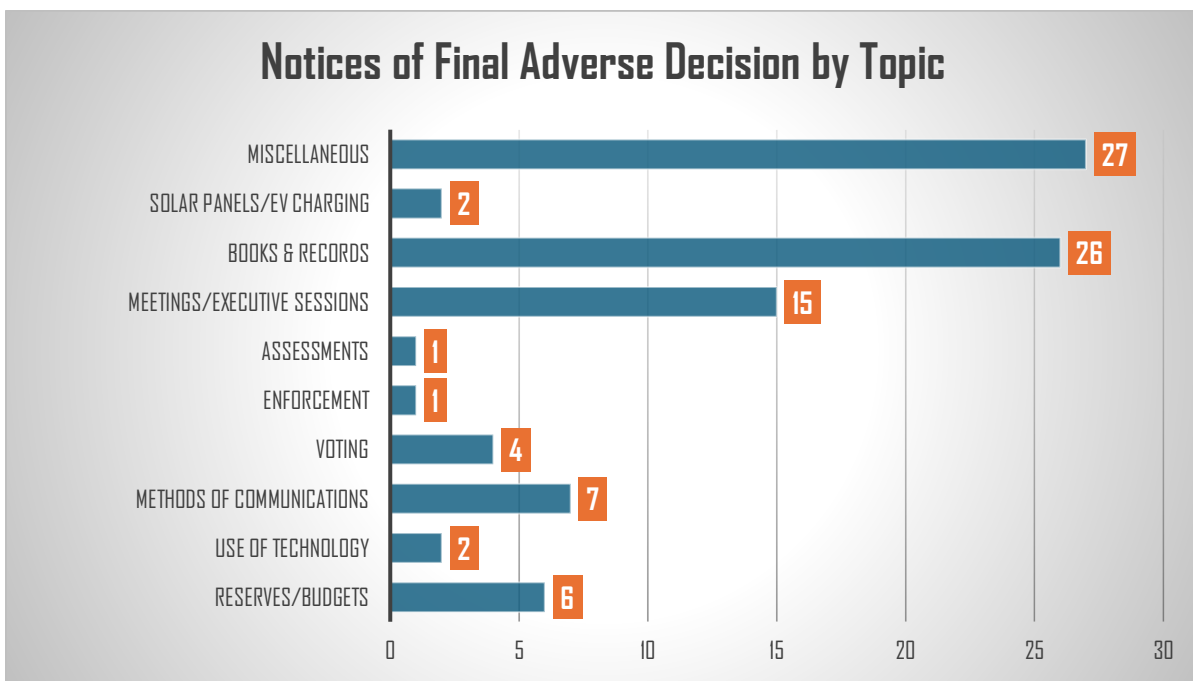
Overall, there were 105 complaints involving POAs, compared to 101 issues last year. The Office is continuing with its effort to make it easier for owners and members to understand the limits of our authority. Despite our efforts, a large number of complainants express frustration with the Office’s limited authority for issues related to violations of the association’s governing documents, civil or criminal law issues, or violations of the Virginia Nonstock Corporation Act. This is true for condominium complainants as well.

Ombudsman Determinations

This year the Office received 69 Notices of Final Adverse Decision (NFADs), which is up nine from last year’s total. As noted in prior reports, most of these NFADs asserted more than a single issue

or topic. Thus, the 69 NFADs presented a significantly higher number of issues for the Office to review and conclude whether a determination must be issued. Of those 69 NFAD submissions, 45 were appropriate for the Office to issue NFAD determinations.

As was the case the previous reporting year, access to association books and records made up the largest number of complaints (excluding miscellaneous complaints on various topics) while issues related to notice and executive sessions again was second. While the number of complaints about assessments and enforcement fell, we saw slight increases in the number of complaints about reserves and methods of communications. There were new topics such as voting issues. Among the miscellaneous NFAD topics, we saw issues related to insurance policies, fiduciary duties of board members, Airbnb, governing documents, landscaping, and even a raccoon in an attic space.



There is no question that access to books and records was the most complained about problem in associations this past year. The law is very straightforward on this topic. Unless the statutes provide otherwise, a board should not fail to provide owners access to the books and records. Good governance of a community is best accomplished when its business is done in the sunshine, therefore withholding such information from their members in clear contravention to the applicable common interest community laws often leads to further issues.

The next largest number of NFAD complaints received by the Office alleged a failure to provide proper notice of meetings or to adhere to the statutory requirements for executive sessions. Owners often misunderstand notice requirements, since they can easily confuse the difference between notice of member/owner meetings and notice of board meetings. Improperly held executive sessions should not be a common complaint, as the applicable statutes set forth the precise requirements and acceptable reasons for holding an executive session.

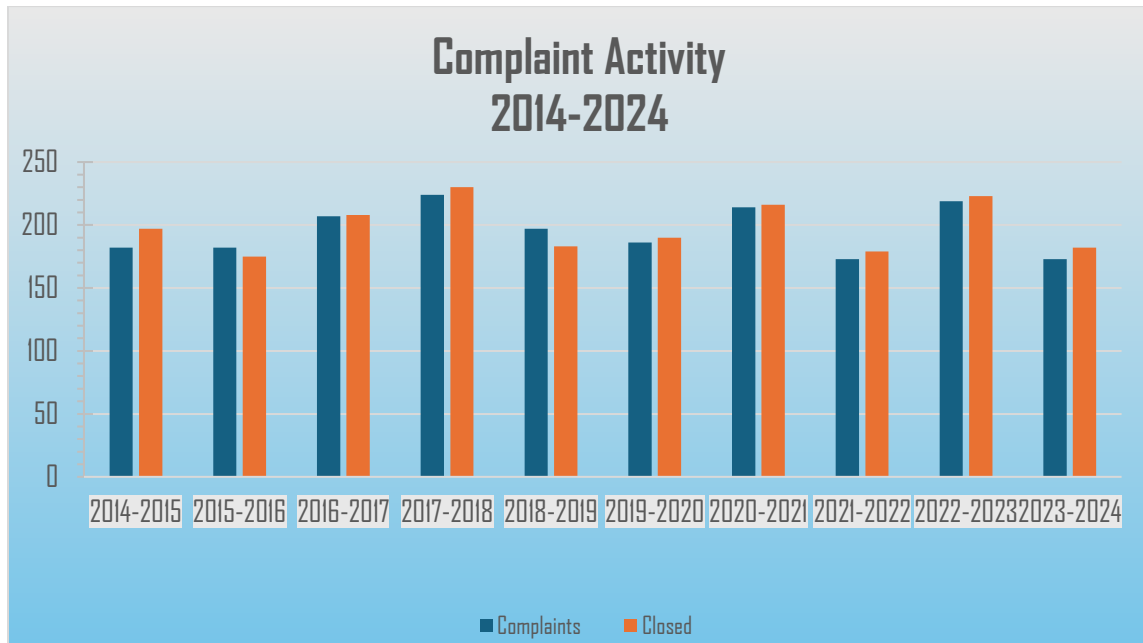
This year we saw several NFADs fail because they were not submitted in a timely manner, or the necessary documentation was not included. Under the statute and regulations that govern the complaint process, a NFAD must be filed with the Office in a timely fashion, meaning it must be received by the Office within 30 days of the date of the final decision issued by the association. Unfortunately, complainants often wait until the last minute to submit their NFAD, and the Office receives it a day or a few days past the deadline. Since the 30-day period is a statutory requirement, the Office is unable to provide additional time to the constituent, regardless of the facts surrounding the reason for the late submission. Another timeliness issue that we see regularly are NFADs received in the last days before the statutory deadline but that are submitted improperly, lack a required document, or the filing fee. While the Office always reviews all NFADs as quickly as possible, there are times when we cannot review the submission quickly enough to notify a complainant that their NFAD is incomplete prior to the statutory deadline. This is especially the case given the volume of constituent contacts and complaints we receive. As a result, there may not be sufficient time for the complainant to provide the missing information for the submitted NFAD. Until a complete NFAD is received, we cannot consider it filed. To minimize this type of timeliness issue, the Office performs its initial review of NFAD packages as quickly as practical.

In addition, approximately 25% of the NFADs received by the Office this year did not allege any violation of common interest community law. Instead, these NFADs alleged violations of the governing documents, violations of the Virginia Nonstock Corporation Act, and violations of local ordinances. The Office has no jurisdiction over such issues. Thus, complainants are disappointed when we explain our lack of jurisdiction and then proceed to close the NFAD without a determination.

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 at <http://www.dpor.virginia.gov/CIC-Ombudsman/Determinations>. This year we have made the Determination database searchable to provide the public with the ability to search on specific topics. Most determinations are posted within a week, and often much sooner.

CONSTITUENT SERVICES

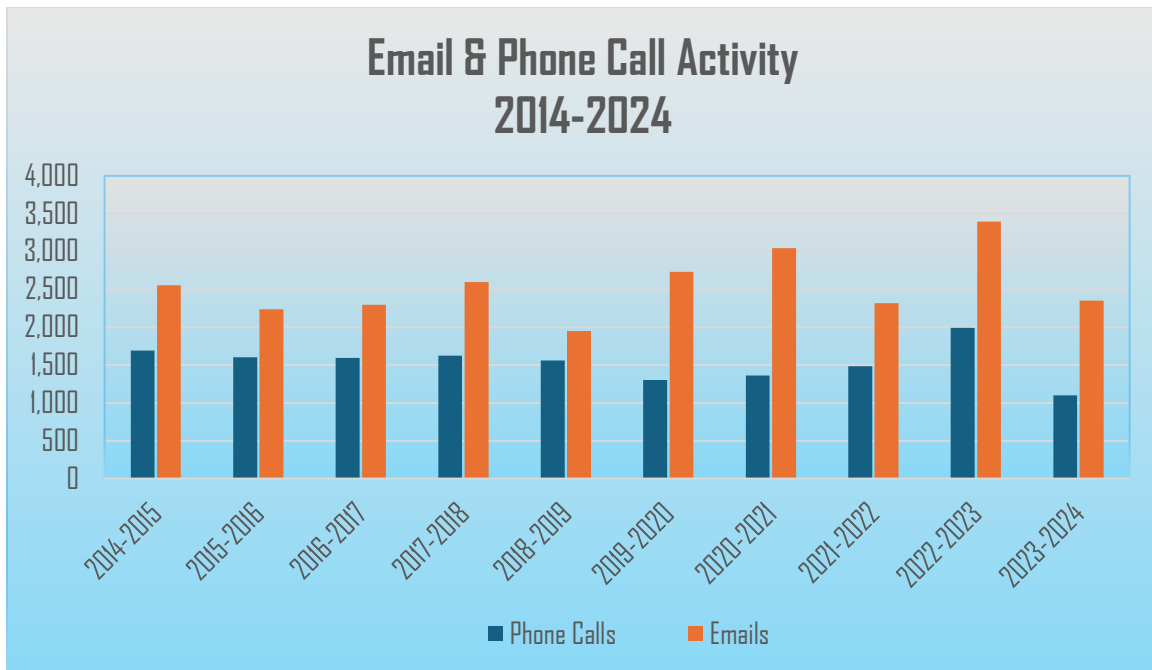
This year the Office received an above-average number of complaints, phone calls, and emails. Those numbers remain higher than average since the Office was created, and the Common Interest Community Ombudsman Regulations (Regulations) were adopted. Phone calls and emails covered a wide range of topics, including access to books and records, meeting notice, disclosures (remaining higher than normal after the introduction of the new Resale Disclosure Act in July 2023), and methods of communication.



*2020-2021 is the first full year the Office ceased its review of time-shares and focused solely on common interest communities.

This year was very similar to the prior reporting year, except for two noticeable events. First, the Office's first Ombudsman retired in December 2023. The vacancy was filled by the present Ombudsman in May 2024. And second, the Office's only Administrative Coordinator had an extended leave. These two events contributed to the reduction in number of complaint activities compared to last year. Presently, though, the Administrative Coordinator now has over a year of experience and is more adept at handling CIC issues. Understandably, some citizens are highly energized by the issues they raise. This means that often, the Office's communications with the parties to complaints can be extensive, and at times, challenging.

Email and Phone Call Statistics



In most cases, phone calls are lengthy and can easily exceed thirty minutes, and it is not unusual to have hour-long conversations. Emails also take a sizable amount of time for response since we often must research the topic or track prior emails to pinpoint the concerns of the constituent. Estimating 20 minutes per email response; and utilizing these quantitative measures, it becomes apparent that a large volume of emails and phone calls comprise a large amount of the Office's time. Because common interest community laws provide the Office with little latitude to respond to many inquiries and complaints since we cannot interpret governing documents of an association or provide information that could be construed as legal advice, expressing these limitations of the Office's authority causes frustration with our constituents.

The Office continues to devote significant time to counseling associations and constituents on the association complaint process required by the Common Interest Community Ombudsman Regulations. In doing so, our goal is to assist associations understanding the process so that they can comply with the Regulations. In particular, the Office instructs community members, managers, and governing bodies on the requirements of the process and review draft complaint procedures. Likewise, the Office offers guidance to constituents so they understand the process for filing a complaint through their own association's complaint procedure. As noted by the large numbers in our annual statistics, the number of associations that either have failed to adopt a complaint procedure or have failed to respond to a submitted association complaint is significant. Therefore, the Office continues to devote a significant amount of time to assist bringing these associations into compliance with their regulatory obligations.

The Office is committed to providing excellent guidance to constituents and meeting its responsibilities under the law that created it. Now that it is fully staffed, the Office has returned

to responding to email and phone inquiries within a day in most cases. As we enter a new reporting year, the Office believes the impending upgrade of our software systems will lead to even greater efficiencies. As noted in last year's Annual Report, the Agency has embarked on a project to update its operational software, as the existing systems are nearly two decades old. The new systems software, EPICx, is currently under development, and the portion that will benefit the Office and our constituents is scheduled to go live in the Spring of 2025.

We anticipate that EPICx will improve efficiencies as well as streamline and enhance our complaint process in several ways. Most notably, the Office anticipates having an online complaint portal through which community members will be able to file complaints, including NFAD complaints. Associations will likewise be able to submit their responses through a portal. A goal of EPICx is to ensure that the system alerts constituents if their complaint submission is incomplete and asks them to correct any outstanding issues. This should greatly reduce the number of incomplete complaint submissions and allow the Office to focus on the completed complaint submissions once received. The Office will also be able to share information with community members who have filed complaints and their Association boards and managers through the portal as well. Further, EPICx will provide the real-time status of a complaint as it is being processed by the Office through its portal. For the Office staff, EPICx will streamline our processes and improve our ability to complete the work of the Office in a more secure, more efficient manner. There will likely be growing pains in this process, but the Office is excited about what EPICx will offer to constituents and stakeholders.

EDUCATION & OUTREACH

The CIC Ombudsman participated in one outreach event this year, delivering a brief overview of the functions of the Office. This was due mainly to the Ombudsman's limited time with the Office over this reporting year. While its outreach opportunities were limited, the Office continues to focus on updating its website to make it easier for constituents to find information that explains the Office's jurisdiction as well as how to complete and submit a complaint or file a NFAD. Moreover, as we noted above, the Office's personnel are deeply involved in developing EPICx, the new systems software that will be replacing and improving its legacy systems. The Ombudsman also worked to increase the library of digitized determinations available on its website for the public in a searchable format so the Office's Determinations on the laws that govern common interest communities are more accessible.

Now that the Office is staffed, the Office will also focus on past, unrealized goals. Those goals included the creation of a newsletter to help educate constituents on the law and issues arising in associations and this office, the creation of teaching videos, seminars, a strengthened FAQ section, and possibly some form of online forum for questions and answers.

The Ombudsman has always served and will continue to serve as a resource for DPOR and the public 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.

THE VIRGINIA RESALE DISCLOSURE ACT

Chapter 23.1 in Title 55.1 of the Code of Virginia (<https://law.lis.virginia.gov/vacode/title55.1/chapter23.1/>) aka the “Resale Disclosure Act” became law in 2023. This is a single set of laws that will govern all resale disclosures for property owners’ associations, condominium associations, and real estate cooperatives. This new legislation brings all the disclosure requirements into a single act and standardizes nearly every aspect of disclosure. The act follows prior legislation related to resale disclosure but adds substantial changes as well.

The Resale Disclosure Act has generated numerous questions from owners, buyers, sellers, real estate agents, board members and CIC managers seeking clarification of the Act. Two bills were passed this year that could shed more light and clarify the Act.

LEGAL DEVELOPMENTS

State Legislation

There were several bills related to common interest communities filed at the General Assembly in 2024, and these bills have the potential to make a substantial impact on common interest communities and the Office of the Common Interest Community Ombudsman.

Bill No.	Patron	Description
HB 105	Reaser	Resale Disclosure Act; resale certificate, fees: This bill amends Va. Code § 55.1-2316(E) known as the Resale Disclosure Act enacted in 2023 (HB 2235 & SB 1222) to make a technical correction. The original version omitted references to the annual report filing requirements for condominium unit owners’ associations and real estate cooperatives’ associations in a provision requiring that these associations be registered with the Common Interest Community Board to collect fees for the preparation and delivery of resale certificates. The legislation corrects the statute to include references to the applicable sections of the Virginia Condominium Act (§ 55.1-1980) and Virginia Real Estate Cooperative Act (§ 55.1-2182) that require these associations to file an annual report with the Common Interest Community Board.
HB 876 SB526	Bulova Graves	Resale Disclosure Act; delivery of resale certificate, remedies:

		<p>Since the enactment of the Resale Disclosure Act in the summer of 2023, the targeted audience has encountered issues that need further clarification. This bill known as the clean-up bill seeks to clarify issues with delivery of the resale certificate, questions about whether a purchaser can waive receipt of the resale certificate, how fees are paid for changes to the provisions for delivery of resale certificates and the right of cancellation for failure to deliver a resale certificate. This bill amends Va. Code § 23.1-2307 <i>et seq.</i></p>
HB 214	Watts	<p>Common interest communities; residents providing certain services exemption: The bill amends § 54.1-2347 of the Code of Virginia to specify that a resident of a common interest community who provides bookkeeping, billing, or recordkeeping services for compensation for common interest community shall be presumed to be an independent contractor. This legislation also provides that none of the exemptions from licensure should be construed as contradicting the worker misclassification provisions in Virginia’s tax laws of Chapter 19 of Title 58.1 of the Code of Virginia. This bill also amends Va. Code § 60.2-210 to provide a carve out in the Unemployment Compensation Act for common interest community managers that employ a resident of a common interest community for bookkeeping, billing, or recordkeeping services. It does not appear that this legislation will necessitate any change in processes by Board staff. However, the proposal will likely result in an increase in calls, emails, and other communications to staff which they cannot answer as taxation and unemployment compensation are beyond the scope of DPOR’s authority.</p>
HB 723	Webert	<p>Property Owners’ Association Act; Meetings of the board of directors; inconsistent provisions: This bill amended § 55.1-1816 of the Code of Virginia to reflect that the rules outlined in this Act will apply to the conduct of meetings of the board of directors. This applies regardless of whether the property owners’ association is incorporated or unincorporated. The amendment emphasizes fairness and uniformity in meeting procedures while ensuring that existing corporate authorities, established by other laws or governing documents, are not undermined or overridden by these rules.</p>
HB 880 SB 341	Bulova Surovell	<p>Common interest communities; foreclosure remedy: This bill, which originated from the recommendation of the Virginia Housing Commission, seeks to provide protection for homeowners who reside in the common interest community by limiting the enforcement of certain liens on primary residences, especially for smaller amounts of assessments. Specifics of the legislation include</p>

		protection for primary residences, monetary limits for enforcement (\$5000), recordkeeping requirements, and recording of liens.
HB1209	Bulova	<p>Common interest communities; reserve studies, special assessment rescission or reduction:</p> <p>The legislation includes three recommendations by the DPOR/Housing Commission Study on Common Interest Communities reserves, completed in 2023. This legislation makes several changes to the Property Owners’ Association Act and the Virginia Condominium Act by removing certain provisions that previously allowed associations governed by these Acts to rescind or reduce assessments related to the maintenance and upkeep of common areas and other association responsibilities, including the maintenance, repair, and replacement of capital components. This will give association governing boards in these communities greater ability to fund reserves and pay for needed capital projects.</p>
HB1241 SB 600	Wilt Obenshain	<p>Virginia Real Estate Time-Share Act; partial termination of certain time-shares:</p> <p>This bill amends and reenacts sections of the Virginia Real Estate Time-Share Act to allow for the partial termination of a time-share projects under Va. Code §55.1-2216. The proposal would allow the developer or the association of the time-share to terminate just a portion (for example, a phase or building) of a time-share. The proposal also specifies the possibility of termination upon a vote of the time-share owners having at least 51 percent of the time-shares in addition to a “written agreement” or vote of the owners. The bill introduces a one-year limitation on legal actions for any dispute arising out of any termination of a time-share project in accordance with the provisions of the Virginia Real Estate Time-Share Act.</p>
SB072	Ebbin	<p>Property Owners’ Association Act or Virginia Condominium Act; assessments for legal obligation:</p> <p>This bill restores order after confusion resulting from a recent Virginia Court of Appeals decision: Burkholder v. Palisades Park Owners Association, Inc. The legislation introduces clarifications and restrictions on related to assessments, charges, and fees within the framework of the Property Owners’ Association and the Virginia Condominium Act. The legislation includes clarification on the use of assessments, restrictions on charges against unit owners, and prohibition of unauthorized charges or assessments.</p>

Virginia Court Cases

This past year, there were several cases related to common interest communities, several of which may have a lasting impact on associations. Some of which are as follow:

Ryan Leggett, et al., Petitioners v. The Sanctuary at False Cape Condominium Association, Inc Respondent.

Supreme Court of Virginia. 900 S.E. 2d 155 (May 2024).

The Petitioners sought an injunction from the Virginia Beach Circuit Court regarding their ongoing dispute with the Respondent and its Board of Directors. The trial court denied the request and was appealed to the Supreme Court. The association is controlled by the Board of Directors (Board), and one of its responsibilities is to approve the annual budget. According to the association's bylaws, the Board must mail a copy of the proposed budget, along with a notice of the meeting at which the budget will be voted on, to all unit owners at least 30 days before the meeting. An audited financial statement reflecting the association's financials for the previous fiscal year must be supplied to all unit owners before the Board votes on the budget for the ensuing year. The Board has failed to comply with these procedures since at least 2018 and has improperly approved a budget each year ever since.

The Board was again attempting to pass the 2024 budget with the same improper procedures when many of the unit owners challenged the Board and sought an injunction. The Supreme Court reversed the trial court's order denying the Petitioners' request for an injunction and remanded the case back to the circuit court.

Dan Chacko v. John R. Ford, Jr.

Court of Appeals of Virginia, Loudoun County, February 2024.

This is an appeal from Loudoun County Circuit Court where the Appellant alleged that the Appellee, the president of his community homeowners' association, trespassed and maintained a private nuisance by entering a lot without permission. Concluding that the Appellee was within his authority as president of the association, pursuant to the Declaration of Covenants, Conditions and Restriction of the association, to enter the property for a specific purpose, the trial court granted the Appellee's plea in bar and dismissed the complaint. The Court of Appeals affirmed the trial court's decision.

Mireille B. Tshiteya v. Greenhouse Board of Directors, et al

Court of Appeals of Virginia, Fairfax County, August 2024

The Appellant appeals an order of the Circuit Court of Fairfax County granting summary judgement in favor of the Appellees. The Appellant bought a condominium in the Greenhouse Condominium in Alexandria, Virginia in 2022. At the time of purchase, the monthly condominium fee was \$913.30. On the day before the resale certificate was completed, the Board voted to increase the monthly assessment to \$1,013.50 starting July 1, 2022. The quoted amount on the resale certificate was the \$913.30 and it was the current amount of condominium fees as of the day that it was issued and the Appellant closed on the unit on June 24, 2022, and the increase effective day was July 1, 2022.

The Appellant challenged the increase, claiming it should have been disclosed. In affirming the trial court's order, the Court of Appeals states that given the content of the resale certificate, an exercise of ordinary care would have disclosed the increased monthly fees prior to closing and that the law gives no remedy for voluntary negligence.

Sanjay Sainani, et al. v. Belmont Glen Homeowners' Association, Inc.

Unpublished, Court of Appeals of Virginia, Alexandria, Virginia, January 2024

This appeal arises from the Loudoun County Circuit Court's disposition of a case involving the association declaration guidelines for outdoor holiday lighting. The Appellants owned property within the Belmont Glen community. The Association governing documents included an amended and restated declaration that authorized the association to adopt rules and regulations for maintenance and aesthetics of the properties within its community. The Appellants displayed strings of holiday lights on both their front door and on their back-deck railing. The association board took action that eventually ended up in court. In reversing the lower court's decision, the Supreme Court of Virginia held that the association's seasonal guidelines exceeded the scope of its authority and were not reasonably related to any of the association's restrictive covenants. The case was remanded for the trial court to reconsider the counterclaims and attorneys' fees anew. Once again, the case ended up in the Court of Appeals, which affirmed in part, reversed in part, and remanded back to circuit court.

Nagla Abdelhalim, Appellant. V. Aaron Lewis, et al.

United States Court of Appeals, Fourth Circuit, Alexandria, January 2024

The case arose from an ongoing dispute between the Appellant and her neighbors in the Armistead Park Homeowners' Association. The underlying case of the dispute arose when the Appellant began an Airbnb service at her home. The Appellees disapproved of the business and alleged that it violated the HOA laws and a local ordinance at the time. The confrontations escalated to include harassment, and intimidation. The HOA board held a meeting and sided with the Appellee that short-term rental was not permitted under its laws. This stopped the business, but the dispute continued. The Appellant filed a suit alleging that the Appellees violated her rights under the Fair Housing Act (FHA) by their conducts of threats, intimidation, and interference with the enjoyment of her home because of her race, national origin, and religion.

The district court not only granted the Appellees' motion for summary judgement but also awarded them attorneys' fees. In reversing the district court award of attorneys' fees, the Court of Appeals found that the Appellant's claims were not without foundation. The Court points out that "the 'award of attorneys' fees to a prevailing defendant is a conservative tool to be used sparingly, in cases in which the plaintiff initiated or continued to litigate a claim that the plaintiff knew or should have known was groundless, frivolous, or unreasonable.'" The Court held that the Plaintiff's claim, though may not survive a motion for summary judgement, was not groundless, frivolous, or unreasonable.

Teywonia Byrd v. Fat City Condominium Owners' Association
United States District Court for the Western District of North Carolina,
Charlotte Division, August 2024

Teywonia Byrd, Plaintiff, who owns a home at the Fat City Condominium community, brought an action under 42 U.S.C. § 1981, alleging that Defendant, Fat City Condominium Owners Association, Inc. has unequally, arbitrarily, and capriciously enforced certain condominium declarations, rules, and regulations against Plaintiff, in violation of her rights guaranteed by federal law. Specifically, Plaintiff alleges she suffered discriminatory enforcement of restrictive provisions controlling alterations to limited common elements. According to Plaintiff, Defendant only began enforcing certain restrictive provisions after Defendant's Board of Directors ("Fat City Board" or "Defendant Board") singled out Plaintiff for selective enforcement. Plaintiff Byrd claims that Defendant Board did not take enforcement action against several violations, including exterior door modifications, committed by other residents. Nevertheless, Plaintiff was, and continued to be, fined for making what she claims was a similar modification. Plaintiff alleges that Defendant's selective enforcement of the condominium declaration's restrictive provisions constitutes unlawful discrimination.

The Plaintiff filed a motion to compel discovery of financial documents. The Court held that the Plaintiff was entitled to some financial documents from the Defendant to prove her discrimination case.

Federal Developments

The U.S. Corporate Transparency Act (H.R. 6395 as part of the William M. Thornberry National Defense Authorization Act for Fiscal Year 2021) The Corporate Transparency Act (CTA) was enacted to reduce money laundering, tax fraud, terrorist finance, and other financial wrongdoing and was part of the Anti-Money Laundering Act of 2020. The bill became law in 2021 when the House and Senate overrode the President's veto. Effective on January 1, 2024, it requires certain types of corporations not otherwise exempted to file information with the Financial Crimes Enforcement Network (FINCEN). The initial report is required no later than December 2024.

Reports must contain the name of the company, any "dba" (doing business as) associated with the corporation, the address of the corporation, the IRS taxpayer identification number (including the employer identification number) and beneficial owner information. Those involved in community associations are concerned about the impact of these new requirements on community associations. In addition to the general corporate information required, information on the "beneficial owners" will also be required and will have to be updated regularly. Based on the current definition of a beneficial owner, people serving on their community association board may be considered a beneficial owner and thus subject to a requirement that every beneficial owner have its full legal name, current residential address, unique identifying number, and a copy of the document that includes that number (passport or state identification) filed with FINCEN. This information will have to be updated every time a board member changes, if that association falls under this legislation.

A failure to comply with the law may result in civil penalties of \$500 per day, up to \$10,000, as well as criminal fines or prison. Numerous community association organizations are delving into this issue, since it is not thought that this bill was ever intended to impact community associations, but as written, it may indeed have a substantial impact. Associations, managers, and attorneys will need to keep their eye on this law in the coming months.

This CTA became effective January 1, 2024. As part of the National Defense Authorization Act, FINCEN had enacted the final regulations implementing the Corporate Transparency Act to establish who must file reports, when they must file, and what information is to be included in the reports. The Virginia Common Interest Communities are required to comply with the Act and its regulations, unless a community association falls under the narrow exemptions of the Act. Since it began, the CTA has been and continues to be challenged in court and in Congress.

Hold Corporate Criminals Accountable Act of 2024 (S.5252)

This bill would amend Title 18, United States Code to require accountability in deferred prosecution agreement, and for other purposes. *Introduced and referred to the Committee on the Judiciary Action by Senate on September 25, 2024.*

Repealing Big Brother Overreach Act of 2023 – 2024 (S. 4297)

This bill seeks to repeal the Corporate Transparency Act. Introduced and referred to the Committee on Banking, Housing and Urban Affairs on May 9, 2024.

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

Incorporating National Support for Unprecedented Risks and Emergencies (INSURE) Act of 2023-2024 (H.R.6944)

The INSURE Act requires the Treasury to establish a catastrophic property loss reinsurance program that provides reinsurance to qualifying insurance companies. To qualify for reinsurance coverage, insurers must offer an all-perils insurance policy for residential or commercial property and offer incentives to policyholders for activities that reduces losses. *Introduced and referred to the House Committee on Financial Services on January 10, 2024.*

Community Association Reporting Exemption Act of 2023-2024 (H.R.9045)

This bill is to amend Title 31 of the United States Code, to exempt entities subject to taxation under section 528 of the Internal Revenue Code of 1986 from certain beneficial ownership reporting requirements. *Introduced and referred to the House Committee on Financial Services on July 15, 2024.*

Disaster Resiliency and Coverage Act of 2024 (H.R.7849)

This bill will amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to require the President to establish an individual household disaster mitigation program, and for other

purposes. *Introduced and referred to the Committee on Ways and Means, and in addition to the Committee on Transportation and Infrastructure on March 29, 2024.*

Fair Access to Co-ops for Veterans Act of 2024 (H.R.7703)

This bill is set to amend the Title 38 of the United States Code, to provide for improvement of the Department of Veterans Affairs loan guarantee for purchase of residential cooperative housing units, and for other purposes. *Introduced and referred on March 15, 2024, to the House Committee on Veterans' Affairs; on March 19, 2024, referred to the Subcommittee on Economic opportunity; and on March 20, 2024, Subcommittee Hearings Held.*

Making Condos Safer and Affordable Act of 2023 -2024 (H.R.4465)

This bill would amend the National Housing Act to authorize insurance of certain mortgages to finance repairs and improvements to condominium projects, and for other purposes. *Introduced in July 2023 and referred to the House Committee on Financial Services Action.*

National Flood Insurance Program Reauthorization and Reform Act of 2023- 2024 (S. 2142)

This bill would reauthorize the National Flood Insurance Program and other purposes. *Introduced June 2023, referred to the Committee on Banking, Housing, and Urban Affairs. Hearings held on March 12, 2024, by Committee on Banking, Housing, and Urban Affairs.*

Fair Accounting for Condominium Construction Act of 2023-2024 (H.R. 4280) This bill amends the Internal Revenue Code of 1986 to provide an exception to percentage of completion method of accounting for certain residential construction contracts. *Introduced June 2023, referred to the House Committee on Ways and Means.*

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. The following are some of the items gleaned from media reports over the past year which may be of interest to stakeholders:

On September 10, 2024, the Community Associations Institute (“CAI”) filed a separate suit in the Eastern District of Virginia federal court, seeking to exempt community associations from the reporting requirements under the Corporate Transparency Act (CTA). The complaint asserts that the information reporting requirements for Boards under the CTA represent an unconstitutional invasion of privacy and an unreasonable “search” under the Fourth Amendment; that functionally, homeowners associations are “non-profits” in the sense contemplated by the CTA; that the need for individual Board members to provide personal information chills free speech and impairs associational rights; and that the requirements violate other federal legal and administrative rules. CAI is seeking a preliminary injunction against enforcement while the underlying complaint is heard. From [Kenneth R. Jacobs’ Blog, October 7, 2024.](#)

Fairfax County is making it easier for residents living in homeowners' associations and condominiums to access electric vehicle (EV) charging stations through its innovative [Charge Up Fairfax](#) program. [Charge Up Fairfax](#) is a program to help residents of community associations gain access to electric vehicle charging," explains Julie Gurnee, program manager at Fairfax County's Office of Environmental and Energy Coordination.

From [Fairfax County Government NewsCenter, Published October 21, 2024](#).

A fire at a condominium high-rise in Alexandria injured five people and went to two alarms Monday. The Alexandria Fire Department responded around 2:47 p.m. Monday to a 15-story condominium building at 6301 Stevenson Avenue. Two residents and three firefighters were taken to the hospital with non-life-threatening injuries. From [DC News Now, October 14, 2024](#).

Cypress Creek Homeowners feud with the developer over amenities:

The Cypress Creek Homeowners Association alleges the subdivision's developer has not delivered on amenities or met deadlines promised as conditions of approval to build Cypress Creek's sixth and final phase. The developer, however, claims the HOA is part of the reason for the delay. From [The Smithfield Times, September 9, 2024](#).

Norfolk hits obstacles implementing storm risk protection:

On a mid-July evening, condominium owners in Norfolk's historic Freemason district met to organize against what they saw as a threat to their property values and the enjoyment of the waterfront: a planned floodwall, 11 feet or more high, running through their neighborhood. They'd been blindsided a month earlier when a resident invited Kyle Spencer, the city's resilience officer, to present a \$2.66 billion U.S. Army Corps of Engineers coastal storm risk management plan to protect the city from catastrophic flooding. From [Virginia Mercury, August 26, 2024](#).

Association cannot collect assessments despite unauthorized rezoning:

A circuit court correctly dismissed claims made by a property association that a business failed to pay assessment fees after rezoning commercial property without its approval in breach of declarations, the Court of Appeals of Virginia has held. The current owner argued that it was not subject to the commercial declaration or obligated to pay assessment fees because it bought the property shortly after it was rezoned. The circuit court granted demurrer. From [Virginia Lawyers Weekly, August 19, 2024](#).

More HOA's consider having license plate readers installed in neighborhoods:

There is increased interest in having license plate readers in residential areas amid growing concern about neighborhood crime. There's growing interest from various homeowners' associations across the DMV about having license plate readers installed in their neighborhoods. From [FOX 5 DC, August 1, 2024](#).

Woman’s indictment includes HOA thefts:

A Frederick County woman was indicted Thursday for allegedly embezzling thousands of dollars from two parent teacher organizations and a homeowners’ organization. Shawn Marie Bianco, 44, of the 100 block of Georgetowne Court in Stephens City, was indicted by a grand jury for 25 charges of embezzlement from three different groups, according to documents. From The Winchester Star, February 9, 2024.

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 and may either (i) refer such decision to the Board for further review of whether such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board or (ii) make a determination of whether a final adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board and promptly notify the complainant of such determination. If the Office determines that such conflict exists, the Office shall promptly notify the governing board, and if applicable the common interest community manager, of the association that issued the final adverse decision that such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board. If within 365 days of issuing such determination the Ombudsman receives a subsequent notice of final adverse decision for the same violation, the Office shall refer the matter to the Board;
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, referrals made to the Board, 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 Ombudsman 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 Ombudsman shall provide a copy of the written notice to the governing board, and if applicable the common interest community manager, of 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 shall provide the complainant and the governing board, and if applicable the common interest community manager, of 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 final and not subject to further review. If within 365 days of issuing a determination that an adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board the Director receives a subsequent notice of final adverse decision for the same violation, the Director shall refer the repeat violation to the Board, which shall take action in accordance with § 54.1-2351 or 54.1-2352, as deemed appropriate by the Board.