



Common Interest Community Ombudsman Regulations

Effective
July 1, 2012

STATUTES
Title 54.1, Chapter 23.3
Title 55, Chapter 29



Department of Professional and Occupational Regulation

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STATEMENT OF PURPOSE

This regulation requires that associations set rules for receiving and considering complaints from members and other citizens. Specifically, the regulation (i) requires associations to establish written complaint procedures; (ii) requires the maintenance of association complaint records; (iii) sets time frames in which associations must complete certain actions; (iv) indicates the consequences for failure of an association to establish and utilize a complaint procedure; and (v) establishes procedures and forms for filing a notice of final adverse decision. The law that authorizes the Board to establish these regulations is found in Chapter 29 (§ 55-530) of Title 55 of the Code of Virginia.

It is the association's responsibility to stay informed and follow all regulations and statutes governing associations. It is important to read and become familiar with all regulations applicable to associations. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall (www.townhall.virginia.gov).

This document is a complete, edited (unofficial) copy of the Common Interest Community Ombudsman Regulations (18 VAC 48-70). Please refer to the Virginia Administrative Code for an official copy of the applicable regulations. You can access the Virginia Administrative Code online at <http://leg1.state.va.us/000/reg/TOC.HTM>.

It is the goal of the Department of Professional and Occupational Regulation to provide the information you need to comply with the law and regulations. If you have a question and cannot find the answer in this document, please write to:

Common Interest Community Board
Department of Professional and Occupational Regulation
9960 Mayland Drive
Richmond, VA 23233

Or call the Agency at (804) 367-8500.

Or e-mail at cic@dpor.virginia.gov.

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Part I
General

18 VAC 48-70-10. Definitions.

Section 55-528 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

- Association
- Board
- Common interest community
- Declaration
- Director
- Governing board
- Lot

Section 55-79.41 of the Code of Virginia provides definition of the following term as used in this chapter:

- Condominium instruments

The following words, terms, and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

"Association complaint" means a written complaint filed by a member of the association or citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 55-530 of the Code of Virginia. An appeal process, if applicable, shall be set out in an association complaint procedure adopted by the association, including relevant timeframes for filing the request for appeal. If no appeal process is available,

the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.

"Association governing documents" means collectively the applicable organizational documents, including but not limited to the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-20. Submission of documentation.

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

Part II
Association Complaint Procedure

18 VAC 48-70-30. Requirement for association to develop an association complaint procedure.

In accordance with § 55-530 E of the Code of Virginia, each association shall have a written process for resolving association complaints from members and citizens. The association complaint procedure or form shall conform with the requirements set forth in § 55-530 of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with § 55-530 of the Code of Virginia or this chapter.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-40. Establishment and adoption of written association complaint procedure.

- A. Associations registered with the board before July 1, 2012, shall establish and adopt an association complaint procedure within 90 days of July 1, 2012.
- B. Associations filing an initial application for registration must certify that an association complaint procedure has been or will be established and adopted by the governing board within 90 days of such filing.
- C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-50. Association complaint procedure requirements.

The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with § 55-530 of the Code of Virginia or the requirements of this chapter.

- 1. The association complaint must be in writing.
- 2. A sample of the form, if any, on which the association complaint must be filed shall be provided upon request.

3. The association complaint procedure shall include the process by which complaints shall be delivered to the association.
4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.
5. Any specific documentation that must be provided with the association complaint shall be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.
6. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.
7. Notice of the date, time, and location that the matter will be considered shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within a reasonable time prior to consideration as established by the association complaint procedure.
8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.
9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.
10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-60. Distribution of association complaint procedure.

- A. The association complaint procedure must be readily available upon request to all members of the association and citizens.
- B. The association complaint procedure shall be included as an attachment to the resale certificate or the association disclosure packet.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-70. Maintenance of association record of complaint.

- A. A record of each association complaint filed with the association shall be maintained in accordance with § 55-530 E 1 of the Code of Virginia.
- B. Unless otherwise specified by the director or his designee, the association shall provide to the director or his designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or his designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-80. Failure of association to establish and utilize association complaint procedure.

Failure of an association to establish and utilize an association complaint procedure in accordance with this chapter may result in the board seeking any of the remedies available pursuant to Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

Part III
Final Adverse Decision

18 VAC 48-70-90. Filing of notice of final adverse decision.

A complainant may file a notice of final adverse decision in accordance with § 55-530 F of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter.

1. The notice shall be filed within 30 days of the date of the final adverse decision.
2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:
 - a. Name and contact information of complainant;
 - b. Name, address, and contact information of association;
 - c. Applicable association governing documents; and
 - d. Date of final adverse decision.
3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.
4. The notice shall be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-100. Waiver of filing fee.

In accordance with § 55-530 F of the Code of Virginia, 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 complainant.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-110. Review of final adverse decision.

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgment of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The notice of adverse decision will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

In accordance with § 55-530 G of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-120. Decision from the notice of final adverse decision.

Upon review of the notice of final adverse decision in accordance with § 55-530 G of the Code of Virginia, if the director 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. Such 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.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

18 VAC 48-70-125. Referral for further action.

In addition to the provisions of this chapter, any matter involving a violation of applicable laws or regulations of the board may be referred for further action by the board in accordance with the provisions of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1; Chapters 4.2 (§ 55-79.39 et seq.),

26 (§ 55-508 et seq.), and 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia; and the board's regulations.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

Part IV
Office of the Common Interest Community Ombudsman

18 VAC 48-70-130. Purpose, responsibilities, and limitations.

The Office of the Common Interest Community Ombudsman shall carry out those activities as enumerated in subsection C of § 55-530 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.

NOTICE

Included in this booklet are relevant excerpts from the Code of Virginia. Please note that the Virginia General Assembly is responsible for creating and amending the Code, not the Common Interest Community Board. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2012 session. Any changes made during the 2012 session became effective July 1, 2012, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing Virginia common interest communities. Please consult the General Assembly or your local library for annual changes. You can access the Code of Virginia online at <http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+TOC>.

EXCERPT FROM TITLE 55, CHAPTER 29 OF THE CODE OF VIRGINIA

§ 55-530. Powers of the Board; Common interest community ombudsman; complaints.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by § [54.1-2349](#) and this chapter.

B. 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 Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in the performance of its duties under this chapter. The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the balance from the moneys collected annually in the fund.

C. The Office of the Common Interest Community Ombudsman shall:

1. Assist members in understanding their rights and the processes available to them according to the laws and regulations governing common interest communities;
2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
3. Provide to members and other citizens information concerning common interest communities upon request;
4. Make available, either separately or through an existing Internet website utilized by the Director, information as set forth in subdivision 3 and such additional information as may be deemed appropriate;

5. Receive the notices of final adverse decisions;

6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested, notices of final adverse decisions received, any actions taken, and the disposition of each such matter;

7. 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;

8. Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries;

9. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

10. Monitor changes in federal and state laws relating to common interest communities;

11. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

12. Carry out activities as the Board determines to be appropriate.

D. The Board may use the remainder of the interest earned on the balance of the fund and of the moneys collected annually and deposited in the fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expedient and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this chapter.

E. 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 but not be limited to 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 mail address of the Office of the Common Interest Community Ombudsman. 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.

F. 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, § 55-530.1. 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.

G. 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.

H. The Board shall issue a certificate of filing to each association which has properly filed in accordance with this title. The certificate shall include the date of registration and a unique registration number assigned by the Board.

I. The Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.

(1993, c. 958; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208.)