



COMMONWEALTH of VIRGINIA

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

GORDON N. DIXON
DIRECTOR

DEPUTY DIRECTORS:

NICK A. CHRISTNER
Compliance & Investigation

MARK N. COURTNEY
Licensing & Regulation

STEVEN L. ARTHUR
Administration & Finance

MEMORANDUM

TO: All Associations Registered with the Common Interest Community Board

FROM: Trisha L. Henshaw, Executive Director
Common Interest Community Board

DATE: June 28, 2012

SUBJECT: New Regulations Affecting Associations in Virginia Effective July 1, 2012

The Common Interest Community Board's Common Interest Community Ombudsman Regulations ("Regulations") will be effective July 1, 2012. The development of these Regulations, which was the result of requirements added to §55-530 of the Code of Virginia, was started soon after the Board's creation in 2008. Among other requirements, the Regulations require associations to:

- Establish a written process for resolving association complaints from members and citizens.
- Adopt the association's written complaint procedure by **September 28, 2012**.
- Ensure the association complaint procedure conforms to the minimum requirements contained in the Regulations.
- Make the association complaint procedure readily available upon request and include it as an attachment to the resale certificate or the association disclosure packet.

In addition to the above, the Regulations also provide the process for a complainant to file a notice of final adverse decision with the CIC Ombudsman concerning any final adverse decision that has been issued by an association.

You may access the Regulations and related forms at www.dpor.virginia.gov/Homeowners-Associations/. Please take the time to review the Regulations thoroughly as failure to abide by the Regulations may result in Board action as allowed by law. If you have questions or need additional information, feel free to contact the Office of the Common Interest Community Ombudsman by phone at (804) 367-0373 or email at cicombudsman@dpor.virginia.gov.

Important Notice to Community Associations:
Prompt Action Required by All Association Boards

New regulations effective July 1, 2012 require all Virginia community associations to adopt written procedures for resolving complaints. Boards must adopt these procedures within 90 days of the effective date.

The Virginia Common Interest Community Board (CIC Board) has made final changes to the Common Interest Community Ombudsman Regulations. The Regulations are still in a final "comment period," but they are not expected to change.

The Regulations will be final and effective on July 1, 2012. They require that all Virginia community associations establish and adopt an association complaint procedure within ninety days of July 1, 2012. This means each association must have these regulations in place by **September 28, 2012**.

The association complaint procedure must be a written process for resolving association complaints from members and citizens. The complaint procedure must be consistent with the association's governing documents and the CIC Board regulations. The procedures must be included with the association disclosure packet given to prospective purchasers.

COMMON INTEREST COMMUNITY OMBUDSMAN REGULATIONS

Frequently Asked Questions (FAQ)

- Q. What is a "common interest community?"
A. A "common interest community" means real estate located within the Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration. (§55-528 of the Virginia Code)
- Q. We just learned about the regulations. How long do we have to put our complaint process together?
A. You have 90 days from July 1, 2012, to prepare your complaint process and to implement that process. This means that by September 28, 2012 you must have the complaint process in place.
- Q. My association is very small. Do we have to implement the new regulations?
A. Yes, all common interest communities in the Commonwealth of Virginia, regardless of their size, must adhere to the requirements outlined in the regulations.
- Q. My association is self-managed. Do we have to implement the new regulations?
A. Yes, both self-managed and professionally managed associations must follow the new regulations.
- Q. Do we have to hire an attorney to draft our complaint process?
A. Not necessarily. Nothing in the regulations requires an association to hire an attorney. In fact, most associations should be able to draft their own complaint processes without too much trouble. An attorney may, however, be beneficial in helping an association review its existing governing documents and ensuring that the complaint process drafted by the association is not in conflict with those documents or any law or regulation.
- Q. Can our association submit a copy of our complaint process to the CIC Ombudsman or CIC Board for review and approval?
A. Neither the CIC Ombudsman nor the CIC Board can provide review or approval of your process. If a Notice of Final Adverse Decision is submitted to the Ombudsman's office and in reviewing that Notice, the Ombudsman determines the complaint process is not in compliance with the regulations, the Ombudsman will make the association aware of such noncompliance. Continued noncompliance after notice could result in further action by the CIC Board.
- Q. Does this new complaint process address complaints related to internal issues in the association, for example, architectural guideline violations or violations of our declaration or bylaws?

- A. No, this complaint process is only for members and citizens to submit complaints related to violations of common interest community law or regulations. Common interest community laws include the Property Owners' Association Act, the Condominium Act, and the Virginia Real Estate Cooperative Act.
- Q. What if I have a complaint about our manager or management company?
- A. Manager complaints fall under two possible categories. If the complaint is related to a violation of common interest community law, the member or owner should utilize the association complaint process required by the new regulations. If the complaint is from the association board itself or is related to a violation of the Common Interest Community Manager Regulations (a specific set of regulations for common interest community managers), the complaint should be submitted directly to DPOR on a DPOR complaint form.
- Q. Why are citizens included as individuals that can file a complaint with an association?
- A. The citizen language was included in the legislation that was enacted July 1, 2008 and created both the CIC Ombudsman's office and the CIC Board. While rare, there may be cases where a citizen, who is not a member or unit owner of an association, has a valid complaint related to a violation of common interest community law. An example would be real estate agents who are unable to obtain disclosure packets or resale certificates.
- Q. What kind of complaints will the association be receiving from its members or owners?
- A. Some of the key areas that we anticipate will be the focus of complaints are access to books and records, notice of meetings, open meeting requirements, methods of communication, and open forums. These are among the most frequent complaints the Ombudsman receives now.
- Q. Why can't members and owners just keep submitting complaints to the Ombudsman?
- A. The Ombudsman's office was never created to accept complaints. The office was created to accept Notices of Final Adverse Decision and has only accepted complaints while the regulations were pending approval. The Ombudsman will still be available as an information resource to all association members, unit owners and boards of directors.
- Q. What should associations do about the other complaints types of complaints they receive – maintenance, architectural guidelines, parking, etc.?
- A. Associations should continue to address those types of internal complaints in whatever manner they have always addressed them. They must be certain, however, that they follow the due process requirements under common interest community law or members or unit owners may file a complaint through the new complaint process alleging a lack of compliance with notice and hearing requirements.