
Common Interest Community Ombudsman Regulations

Virginia Administrative Code
Title 18. Professional and Occupational Licensing

Chapter 70
Common Interest Community Ombudsman Regulations

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Part I
General

18 VAC 48-70-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association
Board
Common interest community
Declaration
Governing board
Lot

Section 55.1-1900 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.

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“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 § 54.1-2354.4 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.

“Director” means the Director of the Department of Professional and Occupational Regulation.

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

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 Article 2 (§ 54.1-2354.1 et seq.) of Chapter 23.2 of Title 54.1 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

Part II Association Complaint Procedure

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

In accordance with § 54.1-2354.4 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 § 54.1-2354.4 of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with § 54.1-2354.4 of the Code of Virginia or this chapter.

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

A. Associations filing an initial application for registration pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 of the Code of Virginia must certify that an association complaint procedure has been established and adopted at the date of registering or within 90 days of registering with the Board.

B. An association that has been delinquent in registering the association and filing its required annual reports is still required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.

C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

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 § 54.1-2354.4 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.

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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.

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 described in § 55.1-2310 of the Code of Virginia.

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 § 54.1-2354.4 A 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.

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.

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 § 54.1-2354.4 B 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.

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

In accordance with § 54.1-2354.4 B 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.

18 VAC 48-70-105. Receipt of notice of final adverse decision .

In accordance with § 54.1-2354.3 B3 of the Code of Virginia, upon receipt of a notice of final adverse decision, the Office of the Common Interest Community Ombudsman may either (i) refer such adverse decision to the board for further review of whether such adverse decision is in conflict with the laws or board regulations governing common interest communities or interpretations thereof by the board; or (ii) review such adverse decision in accordance with the requirements of this part.

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 governing board and, if applicable, the common interest community manager of 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 § 54.1-2354.4 C 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.

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

A. Upon review of the notice of final adverse decision in accordance with § 54.1-2354.4 C 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 must 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.

B. 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 is final and not subject to further review.

C. In accordance with § 54.1-2354.4 C of the Code of Virginia, 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 by the association, the director must refer the repeat violation to the board, which must take action in accordance with § 54.1-2351 or 54.1-2352 of the Code of Virginia, as deemed appropriate by the board.

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 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; and the board's regulations.

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 § 54.1-2354.3 of the Code of Virginia.