
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.

A. 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
- Common interest community manager
- Declaration
- Governing board
- Lot

B. Section 54.1-2354.1 of the Code of Virginia provides the definition of the following term as used in this chapter:

- Director

C. Section 55.1-1900 of the Code of Virginia provides definition of the following term as used in this chapter:

- Condominium instruments

D. Section 55.1-2307 of the Code of Virginia provides definitions of the following terms as used in this chapter:

- Governing documents
- Resale certificate

E. The following words, terms, and phrases, when used in this chapter, have the following meanings unless a different meaning is provided or is plainly required by context:

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“Adverse decision” or “final adverse decision” means the final decision 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.

“Association complaint” means a written complaint filed by a member of the association or a citizen pursuant to an association complaint procedure. An association complaint must concern a matter regarding an action, inaction, or decision by the association, governing board, or managing agent that is in conflict with applicable common interest community laws or regulations.

“Association complaint procedure” means the written process adopted by an association to receive and consider association complaints from members and citizens.

“Common interest community laws or regulations” means Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia; Chapter 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), 20 (§ 55.1-2000 et seq.), or 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; or the regulations of the board.

“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.

18VAC48-70-20. 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 23.3 of Title 54.1 of the Code of Virginia must 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 will 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 must 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 as of 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 will 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 must be in writing and include the following provisions in addition to any specific requirements contained in the 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 will be provided upon request.
3. The association complaint procedure must include the process by which complaints are delivered to the association.
4. The association complaint procedure must include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 54.1-2354.4 of the Code of Virginia.
5. The association must provide written acknowledgment of receipt of the association complaint to the complainant within 14 days of receipt. The acknowledgment will be hand delivered, mailed, or delivered by third-party courier with proof of delivery to the complainant at the address provided, or by electronic means, unless prohibited by the governing documents, provided the association retains sufficient proof of the electronic delivery.
6. Any specific documentation that must be provided with the association complaint must be clearly described in the association complaint procedure. In addition, to the extent the

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complainant has knowledge of the law or regulation applicable to the complaint, the complainant will provide that reference.

7. The association must have a reasonable, efficient, and timely method for identifying and requesting any additional information from the complainant that is necessary to continue processing the association complaint. The association will 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.

8. Notice of the date, time, and location that the matter will be considered will be hand delivered, mailed, or delivered by third-party courier with proof of delivery to the complainant at the address provided or delivered by electronic means, unless prohibited by the governing documents, provided the association retains sufficient proof of the electronic delivery at least 14 days, unless otherwise agreed to in writing, prior to consideration as established by the association complaint procedure.

9. After the final determination is made, the written notice of final determination will be hand delivered, mailed, or delivered by third-party courier with proof of delivery to the complainant at the address provided or delivered by electronic means, unless prohibited by the governing documents, provided the association retains sufficient proof of the electronic delivery, within seven days.

10. The notice of final determination must be dated as of the date of issuance and include specific citations to common interest community 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 must also be provided.

11. The notice of final determination must include the complainant's right to file a notice of final adverse decision with the Common Interest Community Ombudsman and the applicable contact information.

12. An appeal process, if applicable, must be set out in an association complaint procedure, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure must indicate that no appeal process is available and that the rendered decision is final.

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 the director's designee, the association must provide to the director or the director's designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or the director's 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 must be filed within 30 days of the date of the final adverse decision.
2. The notice must be in writing on forms provided by the Office of the Common Interest Community Ombudsman. The forms will include the following information:
 - a. Name and contact information of complainant;
 - b. Name, address, and contact information of association; and
 - c. Date of final adverse decision. The date of final adverse decision will be the date of the notice issued pursuant to subdivisions 9 and 10 of 18VAC48-70-50.
3. The notice must 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 that accompanied the final adverse decision, and a copy of the association complaint procedure.

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4. The notice must be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

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

A. 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.

B. The board will use the current U.S. Department of Health and Human Services (HHS) Poverty Guidelines to establish the threshold for whether a filing fee will be waived or refunded as a result of financial hardship. The HHS Poverty Guidelines, as updated annually in the Federal Register, are available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

C. In order to determine whether the complainant requesting the waiver or refund of the filing fee is at or below the HHS Poverty Guidelines, the complainant must submit to the board supporting documentation satisfactory that provides proof of income.

D. A waiver or refund of the filing fee will be granted if proof of income submitted is at or below the then-current HHS Poverty Guidelines.

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

In accordance with § 54.1-2354.3 B 3 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.

A. 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 will provide written acknowledgment of receipt of the notice to the complainant and will 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 is not complete and will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

B. 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 will provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

C. Information that was not part of the final adverse decision will not be considered.

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 will carry out those activities as enumerated in § 54.1-2354.3 of the Code of Virginia.