

PROCEDURE FOR FILING A COMPLAINT WITH THE OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON

Filing a Complaint with the Office of the Ombudsperson is a two-step process:

First, you **must** try to resolve your complaint through an “*Internal Dispute Resolution*” process (or “IDR” process) between a homeowner (or other interested person) and the board. Either a homeowner or the board can start the IDR process by sending a written IDR complaint to the other.

Second, if the board **ignores** the IDR complaint; or does not take part in an IDR process; or if the board does not resolve the complaint internally, you can file a “Contact/Complaint” form with the Office of the Ombudsperson.

Both forms are linked to this Procedure, and are available on the Ombudsman’s website

Details of each part include:

1. File your IDR complaint with the Board, First. The Ombudsperson Cannot Review a Complaint of a Violation of Law or Governing Documents Unless The Board First Gets A Written IDR Complaint:

- A unit owner or board must first try to resolve a complaint of violating the law or documents governing the Community by using the Association’s Internal Dispute Resolution complaint form.
- If the board has no IDR rules or forms the board must follow the steps in the “Ombudsperson’s Template for Internal Dispute Resolution.” It is available on the Ombudsperson’s website. A “template” is a “sample” or “example” form.
- Write your complaint on the board’s complaint form. But, if board has none, write your complaint on the form attached to the “Ombudsperson’s Template for Internal Dispute Resolution.” The IDR Complaint form is the last two pages of the Template.
- If a homeowner sends an IDR complaint to the board, the board must use the board’s IDR complaint form and the steps in its bylaws. If the Association has no IDR Form, it must use the Ombudsperson’s Template for Internal Dispute Resolution.
- If the board does not use the steps to IDR, or does not respond to your complaint in 20 days, you can file the complaint with the Office of the Ombudsman. Report the board’s failure to use IDR on the Ombudsperson’s Contact/Complaint Form besides the underlying complaint.
- If a homeowner does not follow the deed restrictions, bylaws or rules, the board can use any process or remedies allowed in the governing documents.

- An “interested person” *other than a unit owner*, or a board, should also first try to resolve a complaint through the association’s or Ombudsman’s IDR procedure.
- The “Internal Dispute Resolution Complaint” is the last 2 pages of the Template IDR procedure. It leaves little room for a complaint, but invites adding pages. Print or make enough copies for you and the board.
- Please be specific and detailed in describing your complaint.
- Use the following outline:
 - Describe the general complaint (for example: “The board refused me access to financial documents.”)
 - Next, state the name of the document and section that governs your complaint (for example “Bylaws, Article 4, Section 4.”).
 - Then, write out the exact words of the rule violated. Include necessary parts of the community’s declarations or certificate of incorporation, or bylaws, or rules, or regulations, and any statutes involved. This makes a “roadmap” to understanding your complaint. It will help both the board and the homeowner to understand the governing documents and the complaint. It will help the Ombudsperson if review is required.
 - Explain your complaint like you are telling it to someone you don’t know.
 - Start at the beginning and explain your complaint in the order things happened. It is the easiest way for others to understand.
 - State exactly what you want done to resolve the complaint. Tell the board what *action* you are asking the board to take or *the outcome or result* you want from the board.
- Sign and date your complaint and add your address, telephone number and email address.
- Check off how you delivered the complaint to the board.
- Make and keep a copy for yourself.

2. Filing the Complaint- Use the Ombudsperson’s “Contact/Complaint” Form:

- If the board does not resolve your IDR issue, and your claim involves violation of the law or documents governing your community, you can file the complaint for review by the Office of the Ombudsperson.

- Get a copy of the Ombudsperson's "Contact/Complaint" Form from the internet or by calling the Ombudsman's Office. You can fill out, print and even file the Contact/Complaint Form on the Ombudsperson's Website. Read all of it before filling it out. Make copies for yourself.
- The Ombudsperson's Act requires the Complaint to include "Required Information." You must attach a copy of your community's "governing documents." These include: the declaration; the certificate of incorporation; the bylaws; and the rules and regulations of your community, and other information. Attach everything you sent to the board in the IDR complaint, and all documents sent to you by the board. You need not send a second copy of any document sent by you or the board in the IDR.
- When you complete your Complaint Form and attach all the documents, deliver it to the Office of the Ombudsperson, by hand, by mail, or by email. The address and contact information is on the form. Also, send a check for \$35 to "Department of Justice, Office of the Ombudsperson."
- **The Contact/Complaint Form:**
 - Must be filed with the Ombudsperson within 30 days of the "final adverse decision" of the board, or the board's refusal to take part in internal dispute resolution (the Ombudsperson may extend this for "good cause");
 - Must be completed in writing on a "Contact/Complaint Form" from the Office of the Common Interest Community Ombudsperson (available at the website of the Office of the Ombudsperson or by calling the number below);
 - Must include copies of any "Required Information"¹ listed in the Contact/Complaint Form and all supporting documents, correspondence and other materials about the issue and the decision, and
 - Must include a check for the \$35 filing fee² attached, (the Ombudsperson can reduce this for "good cause"). Make the check payable to "Department of Justice, Office of the Ombudsperson."

You can contact the Office of the Ombudsperson:

Delaware Department of Justice
 Office of the Common Interest Community Ombudsperson
 820 N. French Street
 Wilmington, DE 19801
 Tel: 302-577-8600
 Outside New Castle County: 800-220-5424

¹ 29 Del. C. §2545 (a)

² 29 Del. C. §2544 (15)

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Fax: 302-577-6499

email: CIC.OmbudsmanDOJ@state.de.us

Web site: <http://attorneygeneral.delaware.gov/fraud/cpu/ombudsman.shtml>

The Ombudsperson will review your complaint and the submitted materials. If the complaint seems “meritorious and appropriate,” the Ombudsperson may offer:

- meetings,
- mediation,
- arbitration or
- other forms of Alternative Dispute Resolution (ADR) to the parties,

to help resolve the claim. The parties must agree in writing before the Ombudsman can provide ADR. The Ombudsman can provide ADR only if both sides agree.

The Ombudsperson cannot not make orders like a court, unless the parties agree to binding arbitration, in writing. More information about ADR is on the website. The Act requires a fee for ADR services.

The Ombudsperson can investigate a complaint, if necessary, through:

- subpoenaing witnesses;
 - compelling the attendance of witnesses;
 - compelling witness testimony;
 - administering oaths or affirmations;
 - taking evidence;
 - subpoenaing books, records, papers, or other evidence needed for exercising the powers or performing the duties of the Ombudsperson.
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- The Ombudsperson can refer a claim of violation of existing Delaware law to others within the Department of Justice or any other appropriate law-enforcement agency, in the Ombudsperson’s discretion.
 - The Ombudsperson may exercise discretion and drop an action, but will tell the parties.