

**COMMON INTEREST COMMUNITY OMBUDSPERSON'S
TEMPLATE FOR
HOMEOWNERS' ASSOCIATIONS EXECUTIVE BOARDS TO ADOPT
FOR INTERNAL RESOLUTION OF COMPLAINTS**

Introduction

The Common Interest Community Ombudsperson Act requires the Office of the Ombudsperson (the "Office") "To establish a template of reasonable written procedures for the executive board of a common interest community Association to adopt to internally handle complaints from Unit Owners and other interested parties." 29 *Del. C.* §2544 (8). The Act then states:

"Each common interest community association shall establish and adhere to the established written procedures when resolving complaints from Unit Owners and other interested parties.

The procedures established by the Ombudsperson and adhered to by the Association may include the following, in addition to procedures outlined in the common interest community Association's declaration, bylaws, or other governing documents."

The Office of the Ombudsperson interprets this as requiring each common interest community (CIC) Association to establish a written procedure for internally and informally reviewing and resolving Unit Owner complaints and Association Complaints against a Unit Owner. An Association's compliance with the written procedure requirement may include the following procedures established by the Office in addition to those procedures outlined in the CIC's declaration, bylaws, or other governing documents. The Office recommends that the requirements of the governing documents be collected into a single written procedure, and if there are any conflicts with the requirements of section 2544 (8), that the conflicts be resolved by the Association.

If the Association has no written procedure for internally resolving complaints concerning Unit Owners, the following may be adapted to the language and governing documents of the Association, and adopted by the Association. The Office will apply this Template procedure if the Association does not adopt its own.

The Office recommends that each Association adopt this internal procedure to notify a Unit Owner of CIC Complaints and provide an opportunity to be heard prior to proceeding with legal action, or placing a lien on a Unit Owner' property.

Please direct comments about these procedures to the Office.

[Name of Common Interest Community Association]

[Address and Telephone Number of Association or Managing Agent]

1. The Unit Owner or other interested person may present a Common Interest Community (CIC) Complaint to the Association.¹ The Association may present a CIC Complaint to a Unit Owner or Other interested person. Whoever presents a CIC Complaint is the “Complainant.” Whoever the CIC Complaint seeks a response from is the “Respondent.”

1.2. A Unit Owner shall not be charged a fee to participate in the process, unless the Association determines the process is being abused.

2. The CIC Complaint must be on the attached CIC Complaint Form, or be substantially similar to the CIC Complaint Form. The Association will provide a copy of the Form to the Unit Owner upon request, or otherwise make the form generally available.²

3. The Complainant must deliver the completed CIC Complaint, including all required supporting information to the Respondent: in person; or, by mail or delivery service; or, [if consistent with established procedure of the Association,] by electronic means provided the complaining party retains sufficient proof of electronic delivery. The Association’s representative shall mark on the CIC Form the date the CIC Complaint is received, and shall mark the date of receipt on copies of the CIC Form if requested by the Unit Owner. ³

3.1 For the purposes of these procedures a party makes “delivery”⁴ in one of the following ways:

- hand delivery by or to a Unit Owner to the current address, in person, or by services such as FedEx, UPS or other delivery service that creates a record of delivery; or
- registered or certified mail, return receipt requested; or USPS “delivery confirmation,” at the address provided by the Association or the Unit Owner; or,
- [if consistent with established procedure of the Association,] by electronic means, provided the sender retains sufficient proof of the electronic delivery.

3.2 If a Unit Owner delivers a CIC Complaint to the Association, the Association must participate in this internal dispute resolution procedure.

4. The Association must deliver written acknowledgment of receipt of a Unit Owner’s CIC Complaint to the Unit Owner within 14 days of receipt by any of the means described in paragraph 3.1.⁵

5. Any specific documentation required in support of the CIC Complaint must be delivered with the CIC Complaint, and must be described in the CIC Complaint.⁶ This documentation may include:

- the Certificate of incorporation;

¹ 29 Del. C. §2544 (8)

² 29 Del. C. §2544 (8) (a), (b)

³ 29 Del. C. §2544 (8) (c)

⁴ 29 Del. C. §2544 (8) (c), (d)

⁵ 29 Del. C. §2544 (8) (d)

⁶ 29 Del. C. §2544 (8) (e)

- the Declaration;
- the Bylaws;
- any Rules of the Association;
- any other governing document of the Association;

and, if needed for the issue in dispute:

- notice letters, correspondence;
- bills;
- checks;
- photographs; and
- any other document or evidence that supports the CIC Complaint, or is relevant to the matter complained about.

5.1 The Association will make and provide a copy of the governing documents to the Unit Owner upon request, including the Certificate of Incorporation, Declarations, Bylaws, Rules, covenants or any other documents creating or governing the Association and other pertinent books and records of the Association.⁷

5.2 If the Complainant or Respondent relies upon any law or regulation applicable to the CIC Complaint, they should provide that information, and describe the desired action or resolution in the CIC Complaint.⁸

6A. A party to a dispute may request the other party, in writing, to meet and confer in an effort to resolve the dispute. The board shall promptly designate a director to meet and confer. The parties shall meet promptly at a mutually convenient time and place, informally explain their positions to each other, and confer in good faith in an effort to resolve the dispute. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association. The agreement binds the parties and is judicially enforceable if it is signed by the parties; is not in conflict with law or the governing documents of the Association; and is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

6B. If the dispute is not resolved through “meet and confer,” or requires additional information, the Respondent, if it is the Association shall review the CIC Complaint at the next Association meeting, and within 10 days after, make a reasonable, efficient, and timely request for any additional information that is necessary for the Unit Owner to provide in order to continue processing the CIC Complaint.⁹ A Unit Owner who is a Respondent, may request additional information within 20 days of receipt of the Complaint,

6.1 The Respondent will provide the requested information, if any, within 10 days of the request, unless there are unforeseen circumstances. If there are unforeseen circumstances the Respondent must notify the Complainant when the information will be provided.

⁷ 25 Del. C. §81-318 (a)(4), (b)

⁸ 29 Del. C. §2544 (8) (e)

⁹ 29 Del. C. §2544 (8) (f)

6.2 The Respondent must respond to and act upon the CIC Complaint within 20 days after the Complainant provides the information requested, or the time expires.¹⁰

7. The Association must notify the Unit Owner a reasonable time before, of the date, time, and location that the Association will consider the CIC Complaint.¹¹

7.1 For purposes of paragraph 7, “reasonable time” means [the time established by the Association's internal complaint procedure, but] not less than 7 days prior to the date for consideration of the CIC Complaint or at a convenient time for both the Association and the Unit Owner.¹²

7.2 The Association will deliver notice of the date, time, and location for consideration of the CIC Complaint to the Unit Owner by the means described in section 3.1¹³

8. The Association must permit the Unit Owner a full opportunity to explain the Unit Owner’s position and evidence, and to question witnesses, Association members, employees or representatives. The Association may ask the Unit Owner questions, and question others.

8.1 Each party must treat the other with dignity, respect and civility. Neither party need tolerate rudeness, name calling, or disrespect. Either party may call a 10 minute recess in the meeting for this reason.

9. No later than 14 business days after consideration of the CIC Complaint, the Association shall make its final determination of the CIC Complaint in writing. The Association shall deliver written notice of the final determination to the Unit Owner.¹⁴

9.1 The notice of final determination shall be dated with the date of issuance and include:

- the written final determination with an explanation of the decision;
- specific quotation of the Associations’ declaration, bylaws, rules or other governing documents, or
- a reference to an applicable law or, regulation or rule that led to the final determination of the Association;¹⁵
- any supporting documents, correspondence, and other materials related to the final decision;

that led to the final determination, as well as:

- the registration number for the Association,¹⁶ if any; and
- the name and license number of the community manager,¹⁷ if any.

¹⁰ 29 Del. C. §2544 (8) (f)

¹¹ 29 Del. C. §2544 (8) (g)

¹² 29 Del. C. §2544 (8) (g)

¹³ 29 Del. C. §2544 (8) (g)

¹⁴ 29 Del. C. §2544 (8) (h)

¹⁵ 29 Del. C. §2544 (8) (i)

¹⁶ 29 Del. C. §2544 (8) (i)

¹⁷ 29 Del. C. §2544 (8) (i)

10. The notice of final determination, if adverse to the Unit Owner, shall inform the Unit Owner of the right to submit the Association's final determination to the Office of the Ombudsperson¹⁸ in substantially the following form:

"You have the right to file a notice of final adverse determination with the Common Interest Community Ombudsman in accordance with 29 *Del. C.* §2544 (9), (10).

The notice to the Ombudsperson:

- must be filed within 30 days of the date of the final adverse decision;
- must be in writing on a 'Contact/Complaint' form provided by the Office of the Common Interest Community Ombudsperson (Ombudsperson) (available at the website of the Ombudsperson or by calling the number below);
- must include copies of any Required Information¹⁹ listed in the Contact/Complaint form and supporting documents, correspondence and other materials related to the decision; and
- must be accompanied by a \$35 filing fee²⁰ (unless waived by the Ombudsperson for good cause).

You may contact the Office of the Ombudsperson at any of the following:

Delaware Department of Justice
Office of the Common Interest Community Ombudsperson
820 N. French Street
Wilmington, DE 19801
Telephone: (302) 577-8400
eMail: Common.Interest.Community.Ombudsperson@state.de.us"

¹⁸ 29 *Del. C.* §2544 (9), (10)

¹⁹ 29 *Del. C.* §2545 (a)

²⁰ 29 *Del. C.* §2544 (15)

**[Name of Common Interest Community Association]
[Address and Telephone Number of Association or Managing Agent]**

COMMON INTEREST COMMUNITY (CIC) COMPLAINT FORM

Pursuant to Chapter 25 of Title 29 of the Delaware Code, the Board of Directors (Board) of the **[Community Association Name]** (Association) has established this complaint form for use by persons who wish to file written CIC Complaints with the Association regarding the action, inaction, or decision by the governing board, managing agent or association inconsistent with the Declaration, Bylaws, Rules or any governing document of the Association, or applicable law.

Legibly describe your CIC Complaint in the area provided below, as well as the requested action or resolution of the issues described in the complaint. Please state the specific facts and circumstances at issue and quote the specific provisions of the governing documents, Delaware laws and regulations that you rely upon in support of your CIC Complaint. If you need more space, please attach additional pages to this CIC Complaint Form. Also, please attach any supporting documents, correspondence and other materials related to the Complaint.

Please sign, date, and print your name and address below and submit this completed form to the Association at the address listed above.

Printed Name:

Signature

Date:

Your Mailing Address:

Lot/Unit Address:

Your Contact Preference: Phone eMail

Your eMail Address:

Your Phone Number:

Other:

NOTICE:

If the Association issues a final decision adverse to your CIC Complaint, you have the right to file a notice of final adverse decision with the Common Interest Community Ombudsperson in accordance with 29 *Del. C.* §2544 (9), (10). The notice must be filed within 30 days of the date of the final adverse decision, must be in writing on the "Contact/Complaint" form provided by the Office of the Common Interest Community Ombudsperson (Ombudsperson); must include copies of any "Required Information" and supporting documents, correspondence and other materials related to the decision, and must be accompanied by a \$35 filing fee, unless waived for good cause by the Ombudsperson. The Ombudsperson may be contacted at:

Delaware Department of Justice
Office of the Common Interest Community Ombudsperson

820 N. French Street
Wilmington, DE 19801
Tel: (302) 577-8600

eMail: Common.Interest.Community.Ombudsperson@state.de.us

I hereby certify that I caused this CIC Complaint and all attached documents to be delivered to the Association at the address provided by the association on _____ [Date] at _____ o'clock am. / pm., by the following means of delivery:

[Check one:]

- _____ I personally delivered the papers to the current address of the Association.
- _____ FedEx, to the current address provided by the Association
- _____ UPS, to the current address provided by the Association
- _____ other delivery service that creates a record of delivery [specify] _____ to the current address provided by the Association.
- _____ registered mail, return receipt requested, to the current address provided by the Association.
- _____ certified mail, return receipt requested, to the current address provided by the Association.
- _____ USPS "delivery confirmation," to the current address provided by the Association.
- _____ [if consistent with established procedure of the Association,] by electronic means, to [email address] _____.

I further certify that I have made and kept a record of delivery.

Your Name [printed or typed]:

Signature: _____

Date: