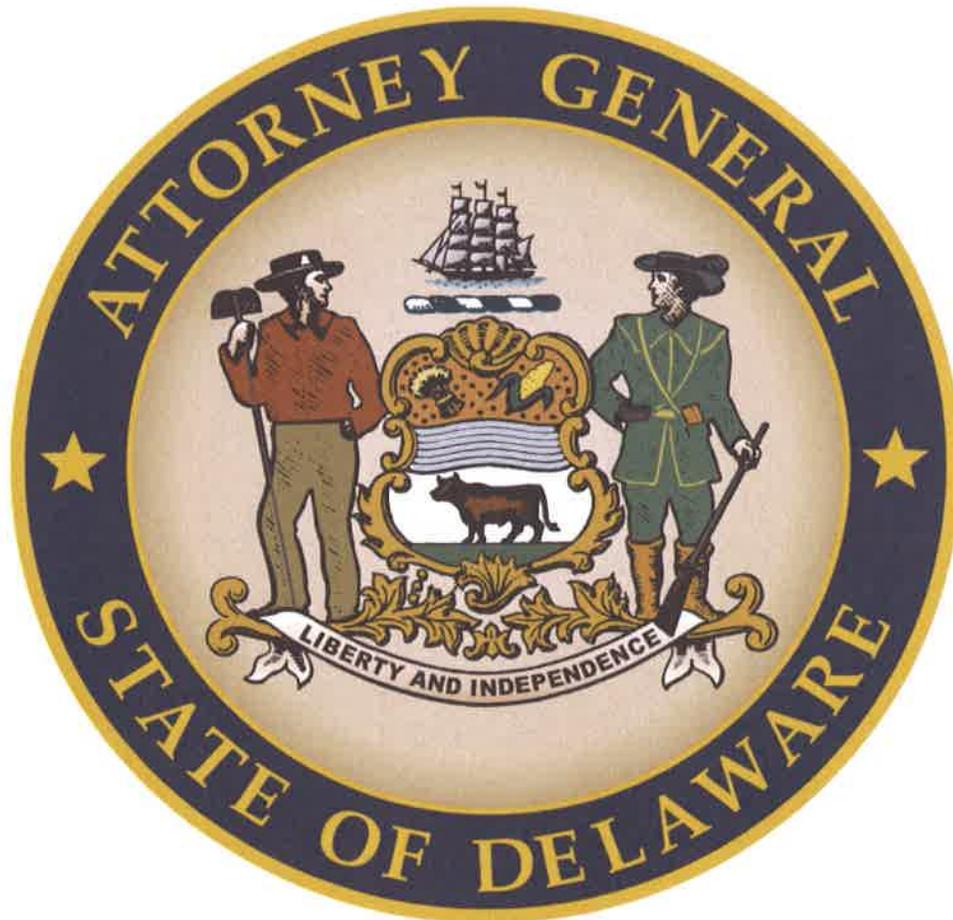


DELAWARE DEPARTMENT OF JUSTICE

**COMMON INTEREST COMMUNITY
OMBUDSPERSON**



Assisting Common Interest Communities to Understand Their Rights and Responsibilities, and the Processes Available to Resolve Disputes

2017-2018 ANNUAL REPORT

The Common Interest Community Ombudsperson shall:

“[M]ake an annual report of the Office’s activities to the Governor, the Attorney General, the General Assembly, and the Chief Justice of the Supreme Court on or before December 1 of each year. ... Each such report shall contain:

- a. Statistics on the number of inquiries and complaints handled by the Office;*
- b. Information on education and outreach efforts by the Office;*
- c. Concerns expressed to the Office by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties;*
- d. Legal developments affecting common interest communities;*
- e. Recommendations for changes to Delaware law or rules of court procedure designed to improve the regulation and operation of common interest communities made by the Ombudsperson and the Common Interest Community Advisory Council;*
- f. Any other information deemed appropriate by the Ombudsperson.”*

29 Del. C. §2544 (16)

Acknowledgements

The Ombudsman thanks the following Department of Justice, Division of Fraud and Consumer Protection staff for their kind and generous assistance in preparing this report:

Geneer Johnson, Sr. Paralegal; Lisa Spellman, Office of Foreclosure Prevention, Outreach Coordinator; Karin DuVall, Administrative Specialist

TABLE OF CONTENTS

Introduction	1
What is an Ombudsperson?	1
Community Served by the Office of the Ombudsperson.	1
The Need Addressed by the Office of the Ombudsperson.....	2
Overview of the Services Available Through the Ombudsperson	2
Status of the Office	3
Annual Report	11
INQUIRIES AND COMPLAINTS HANDLED BY THE OFFICE	11
Inquiries	11
Email Inquiries.....	12
Post-IDR Complaints for “Review”	12
Alternative Dispute Resolution	14
EDUCATION AND OUTREACH EFFORTS	15
Education Efforts.....	15
• Public Workshops: Joint CAI Board Leadership Development Workshop.....	16
• “Collecting Delinquent Assessments” Without a Lawyer- Workshops.....	16
• Outreach Efforts	17
• Meetings and Presentations.....	17
• Information Gathering	17
• Video.....	18
• Email	18
• Tweets	18
• Mail and Print	18
CONCERNS EXPRESSED TO THE OMBUDSMAN	20
Bylaws.....	21
Concerns Expressed, by County	22
Kent County	22
Sussex County	22
New Castle County.....	23
Concerns Expressed By Community Members	23
Concerns of Purchasers	23
Concerns of Homeowners	24
Concerns of Boards.....	31

Concerns of Board Members.....	33
Concerns of Declarants.....	34
LEGAL DEVELOPMENTS IMPACTING COMMON INTEREST COMMUNITIES	35
Legislation:	35
Redaction of Illegal Restrictions from Association Governing Documents	35
Case decisions:	35
RECOMMENDATIONS FOR CHANGES TO DELAWARE LAW OR COURT RULES TO IMPROVE REGULATION AND OPERATION OF COMMON INTEREST COMMUNITIES	38
Topics Under Study By The Legislation Committee of the Advisory Council: ..	39
ADVISORY COUNCIL	44
Additional Committees.....	45
Advisory Council Activity.....	46
Mechanisms to Increase Collection Rate	46
Mechanism to Register Communities	46
CONCLUSION	48
APPENDICES.....	51
THE COMMON INTEREST COMMUNITY OMBUDSPERSON ACT	53
§ 2540 Short title.....	55
§ 2541 Definitions.....	55
§ 2542 Common Interest Community Ombudsperson; creation, appointment, role, term of office, and vacancy.....	56
§ 2543 Common Interest Community Ombudsperson; qualifications.....	56
§ 2544 Common Interest Community Ombudsperson; powers and duties.....	56
§ 2545 Required information.....	61
§ 2546 Common Interest Community Advisory Council.....	61
PROCEDURE FOR FILING A COMPLAINT	65
TEMPLATE FOR “INTERNAL DISPUTE RESOLUTION PROCESS” (IDR).....	70
TEMPLATE FOR INTERNAL DISPUTE RESOLUTION (IDR) COMPLAINT FORM.....	78
CIC “CONTACT & COMPLAINT” FORM	81
ADR PROCEDURES AND FORM AGREEMENTS	93
ALTERNATIVE DISPUTE RESOLUTION PROCESSES AND PROCEDURES	95
INTRODUCTION.....	95
ADVANTAGES OF ADR.....	95
WHAT FORMS OF ADR ARE AVAILABLE THROUGH THE OMBUDSPERSON?	96
Conciliation.....	96

Mediation	98
Arbitration.....	100
Neutral Assessment	102
AGREEMENT FOR CONCILIATION	104
AGREEMENT TO MEDIATE	105
AGREEMENT TO ARBITRATE.....	107
TEMPLATE FAIR ELECTIONS PROCEDURE	109
ELECTION OF DIRECTORS, VOTING PROCEDURE: SECRET BALLOT	111
VOTING AND ELECTION POLICY AND PROCEDURES.....	113
Call for Election or other Voting Meetings.....	113
Name in Nomination.....	113
Election Inspectors.....	114
Secret Ballot.....	114
Electronic Ballot or Ballot without Meeting.....	115
Proxy Ballot.....	116
Counting the Votes.....	116
Results of the Election.....	116
OMBUDSPERSON’S ELECTION SERVICES	119
Election Services:.....	121
Agreement Form	125
Petition of Community Association Form.....	128
Board of Directors Resolution.....	130
Application Information Required From Community	131
TEMPLATE BYLAW FOR THIRD PARTY NOTICE TO HOA BEFORE UTILITY SHUTOFF	135
Introduction	137
Draft Bylaw:.....	137
COMMON INTEREST COMMUNITY ADVISORY COUNCIL.....	139
Office of the Common Interest Community Ombudsperson.....	140
2019 Advisory Council Members.....	140
Common Interest Community Advisory Council Committees.....	143
Schedule of Meetings-2019.....	145

[Page intentionally left blank]

Introduction

The General Assembly created the Office of the Common Interest Community Ombudsperson in the Department of Justice in August 2014. The Office assists members of residential “common interest communities” such as condominiums, cooperatives and “planned communities” (or subdivisions of single-family homes), to understand their rights and responsibilities, and the processes available to them. Where possible, the Ombudsman tries to resolve disputes among members of the common interest community, without resort to the judicial system.

The Act requires the Ombudsperson to submit an annual report each December. 29 *Del. C.* §2544 (16). This report covers 2017-2018.

What is an Ombudsperson?

An ombudsperson (or ombudsman) is a government official who receives, investigates and reports on complaints, and tries to resolve problems fairly.

The Common Interest Community Ombudsperson’s statutory charge is to “assist [members of common interest communities] in understanding their rights and responsibilities and the processes available to them according to the law, regulations and documents governing their respective common interest community.”

Community Served by the Office of the Ombudsperson.

Common interest communities are condominiums, cooperatives, and planned communities. All share common features including: They are authorized by deed restrictions, covenants or conditions to set and collect mandatory, enforceable annual assessments for the maintenance of common areas or common elements of the community such as streets, streetlights, open space, storm water management ponds, and amenities such as playgrounds, clubhouses, swimming pools, and many others.

Unlike the Delaware Uniform Common Interest Ownership Act, (the “DUCIOA”), the law creating the Office of the Ombudsperson applies to all common interest communities regardless of size or when they were created.

The members of the “Common Interest Community” served by the Office of the Ombudsperson include:

- Homeowners or “unit owners” in common interest communities;
- Developers or “declarants” who “declare” the deed restrictions;
- Homeowners’ Associations (HOA), condominium or cooperative councils, Property Owners’ Associations (POA), and maintenance corporations;
- Executive boards of common interest community associations; and
- Other interested parties.

The Need Addressed by the Office of the Ombudsperson.

The General Assembly explained its reason for creating the Office:

In Delaware, county and municipal governments have required that land developers create common interest communities to administer, maintain, or improve common elements in the community such as pools, community centers, storm water management systems, or other common space or infrastructure. These communities are created by legal documents drafted by the developer and are managed by those living in these communities. This system can create difficulties for those living in these communities, especially when disputes arise.

This bill [creates] an Office of the Common Interest Community Ombudsman. The bill [empowers] the Ombudsman to assist common interest communities to understand their rights and responsibilities and to resolve disputes without recourse to the judicial system.

The bill ...also [creates] a Common Interest Community Advisory Council to advise and assist the Ombudsman and to undertake a review of the current common interest community system and make recommendations to the Ombudsman for changes to Delaware law and rules of court procedure to improve the system, with the hope these recommendations would be incorporated into legislation by the 148th General Assembly.

Overview of the Services Available Through the Ombudsperson

The Ombudsperson has the powers and duties stated in 29 *Del. C.* §2544 (1)-(20). They fall into 6 functions:

- **Create** processes, forms and rules for: a Template “Internal Dispute Resolution” (IDR) process for communities to adopt; Alternative Dispute Resolution” (ADR); a Contact & Complaint form to engage the Office; a Template “Fair Election Procedure” and others.
- **Educate** members of Common Interest Communities-through a website, publications, and presentations about the Office to communities and groups throughout the State. The Office also arranges and participates in educational opportunities and workshops for members of the Common Interest Community. The Office participates in public meetings to gain an understanding of the issues facing common interest communities in Delaware. The Ombudsman responds to an increasing number of emails requesting assistance “in understanding the rights and responsibilities and the processes available according to the law, regulations and documents governing the respective common interest community.”
- **Mediate**, arbitrate and provide other Alternative Dispute Resolution (ADR) options when the parties consent. ADR is available even without filing an “internal” complaint if the parties agree.

- **Investigate**, first by reviewing complaints not resolved through the “Internal Dispute Resolution” (“IDR”) required by the Act, at the Association level; and if appropriate, issuing subpoenas, and referring meritorious allegations of violations of existing Delaware law to other divisions of the Department of Justice, or to other law enforcement agencies.
- **Election Services:** Provide vote monitoring, vote counting, and other services to promote fair elections to homeowners’ associations, and create a Fair Election Process.
- **Advisory Council** development and support, for study and recommendations on changes to Delaware law or rules, to improve regulation and operation of common interest communities and to advise the Ombudsman on statutorily required subjects:
 - a. Mechanisms to increase the collection rate for common interest community assessments.
 - b. Developing conflict resolution procedures within common interest communities.
 - c. The feasibility of mandatory mediation, arbitration, or other forms of ADR for disputes not able to be resolved within common interest communities and, if feasible, how to implement a process;
 - d. Developing mechanisms for the registration of common interest communities with the State or other political subdivision.
 - e. Any other topic the Council deems appropriate.

Status of the Office

This message and report covers two calendar years. Resources, principally time, and limited staff, delayed the 2017 report until it became a better use of resources to combine it with the 2018 report.

We identified a trend of annual increases of the number of “inquiry” requests and responses over each prior year, and the number of request for “Review” of unresolved IDR complaints:

Activity	2016	2017	2018
Presentations to Communities (usually after business hours)	32	30	22
Workshops (usually after business hours)	7	9	7
Advisory Council and Committee Meetings	15	18	18
Investigations Supervised-Criminal	4	4	4
*Email Inquiry Responses Re: Rights, Responsibilities & Processes	552	650+ (117% of 2016)	730+ (115% of 2017)
Telephone Calls Received By Ombudsman		410	319
Emails handled by Ombudsman's Office (est.)	11,000		12,200
Complaints Filed for "Review" after Unsuccessful IDR	87		145 (+25 not yet in system)

* To December 1, 2018-excludes calls and emails handled by assistant.

Yet, it was a period of many successful programs and projects.

Refinements

2017 and 2018 were years involving several refinements to the Office of the Ombudsperson necessitated by demand. Community Association Institute estimates approximately 2000-3000 common interest communities in Delaware, home to roughly 239,000 owners or residents. This compares to the staff of one Ombudsman and part of the time of a shared paralegal to deal with myriad complaints, inquiries and duties of the Ombudsman.

When it created the Office, the General Assembly seemed willing to provide additional resources beyond an Ombudsman position. The demand for services demonstrates the need for staff originally anticipated, including a dedicated paralegal and administrative assistant, yet no other resources were provided. Several legislators spoke openly in 2017 and 2018, recognizing the value of the Office and the need for additional resources.

Limited resources compared to demand drove decisions to reach the greatest number of communities and members through education and directly answering email inquiries, at the expense of reviewing individual complaints not resolved through internal dispute resolution (which each require many uninterrupted hours). This still seems the most efficient use of resources, consistent with the tasks assigned.

Internal processes

The Office still carries a large backlog of Post-Internal Dispute complaints of individual owners seeking "review" after unsuccessful "Internal Dispute Resolution" through their Association. We made refinements in handling incoming complaints.

Refinements include more detailed explanations on the Ombudsperson's website of the statutory procedures for complaint review and new internal processes to advance review the incoming complaints' adherence to statutory requirements for review-- such as completing the IDR process, "citing and quoting" the violated governing documents, and attaching governing documents. These administrative actions are necessary before requesting a response from the opposing party. 29 Del. C. 2544 (9), (10).

Many reviews sought present issues that a court can resolve after testimony, but are beyond the Ombudsman's authority, which is not to decide cases and make orders, but "to assist in understanding the rights and responsibilities and the processes available according to the law, regulations and documents governing the respective common interest community."

Two common issues that delay complaint resolution are:

- Some complainants refuse to submit a statutorily required Internal Dispute Resolution (IDR) Complaint Form to their board. Instead, without attempting Internal Resolution they enclose only email-threads. The Ombudsman Act requires complainants to first submit complaints "in writing," on a "form," to the board. We require complainants to organize their complaint by "citing and quoting" their governing documents or governing law and explaining the violation, they allege. Violations of law and documents "governing a common interest community" is a limitation on the Ombudsman's authority.
- Some complainants file an IDR form, but refuse to "cite and quote" the part of the governing documents they allege violated. When followed, the "cite and quote" requirement minimizes mistakes by owners and boards in interpreting governing documents-leading to resolution of about 90% of complaints between homeowners and boards. It also speeds the Ombudsman's review.

These are limitations on the authority of the Ombudsman to review complaints. The Ombudsman's authority is limited to review of "potential *violations of the documents* and laws *governing* a common interest community" and reviewing only those complaints that were "first submitted" in writing to their boards for a first attempt at *internal* resolution.

The Office expends much time repeatedly providing explanations and copies of the procedure and statute to those who will not read or follow statutorily required procedures. This diverts time from reviewing complex documents, providing Alternative Dispute Resolution Services, and special projects.

Advisory Council

Advisory Council continues to meet every other month, an increase over the statutory requirement of four meetings per year. For 2017 and part of 2018, Council invited speakers from each County to discuss County practices for completion of communities, and in one case services provided for transition to owner control from developer control. This is part of the study of improving transitions-by a task force of the Advisory Council. These and some additional speakers should lead to a report on improving transition to owner-control. Better transitions-involving earlier involvement of homeowners serving on the declarant controlled board-leads to better operation common interest communities.

In 2017 and 2018, the Advisory Council agreed to the creation of an Education Committee and a Mentoring Committee. Both are very active.

The Advisory Council Legislation Committee is studying several legislative proposals. In 2018, the legislation committee met more regularly. The Committee's study of offered legislation is ongoing. The Ombudsman asked for a report as the committee reviews each proposal. Legislators have been requesting comment on proposed legislation of their own.

Education

The Department of Justice updated its website, including the Office of the Common Interest Community Ombudsperson's website in 2017. We added new links and new information in 2017 for more direct access to forms and services, more detailed explanation of the "**Procedures for Filing a Complaint**" and "Alternative Dispute Resolution" links.

In 2018, we added links to the homepage to allow free use and downloading the electronic portion of a guide to "**Collecting Delinquent Assessments.**" The Education and Collections Committee completed in this project 2018 and distributed the guide in hard copy at workshops, through the website and through Justice of the Peace Court, which requested supplies of the hard copy of the guide for each of the four civil courts, throughout the State. We delivered the first 35 copies for each court before the end of November. We are already updating the Guide in response to J.P. Court revisions to key forms.

We also added a link to the home page for information and forms for requesting the Ombudsman's "**Election Services**" for vote monitoring and vote counting, developed during a few elections. The link contains forms to assist in requesting these services.

Outreach: Workshops

Advisory Council coordinated with Sussex legislators for a presentation about issues arising in **Transition to Owner Control** at the Roxanna Fire Hall. Over 200 attended and heard from the Ombudsman, Advisory Council member Chad Toms, Esq., the Sussex County Administrator, County Engineer, Senator Hocker and Representative Gray. The legislators co-sponsored the presentation. A recording of the presentation is available on Senator Hocker's Facebook page.

The Ombudsman and the Advisory Council's **Education Committee** provided educational presentations in each County during 2017. We again presented Community Associations Institute's "**Board Leadership Development Workshop**" jointly with the Delaware Valley Chapter of CAI, in New Castle County. We are discussing similar workshops through the Chesapeake Chapter of CAI, which includes Kent and Sussex counties.

In 2018, we launched the "**Collecting Delinquent Assessments**" guide at workshops in each County featuring a demonstration trial of a delinquent assessment collection case to a Justice of the Peace. Approximately 200 attended the initial workshop in Kent County.

In Sussex County, Advisory Council and the Ombudsman presented to several communities and property managers.

We use our expanding **email list** to announce Advisory Council meetings and educational opportunities. A link on our website invites users to add their contact information to our database to receive email. We do not provide our email list to others, but on request will distribute a message to our list.

We continue to answer hundreds of **telephone calls and emails** from homeowners, Association boards, and occasionally attorneys, about the services and procedures of the Office. We assist callers in "understanding their rights and responsibilities," and their governing documents. This often requires general information about the DUCIOA, the Unit Properties Act, the General Corporation Law, Roberts Rules of Order, the processes and needed use of Internal Dispute Resolution before filing a complaint for review by this Office, and other processes available through the Department of Justice, the Consumer Protection Unit, the Court of Common Pleas Community Mediation Program and Chancery and other courts, and county code enforcement offices.

The Ombudsman attends 20-30 association meetings each year to introduce individual communities to the processes, authority and limitations of the Ombudsman's Office, and answer questions.

Dispute Resolution

In 2017, several boards agreed to submit disputes with complaining homeowners to mediation or arbitration through the Ombudsman's Office. The Ombudsman contacted the Bar Association's Conflict Resolution Committee to discuss informing that committee's members of the opportunity to learn more about Alternative Dispute Resolution in homeowners associations and other common interest communities.

The Ombudsman conducted several mediations and arbitrations in 2017. In 2018, the Office scheduled several mediations and arbitrations, but in each instance, one party backed out before the ADR sessions.

In 2018, the Ombudsman updated his Superior Court Mediation Certification credentials by participating in the Superior Court's required mediation credential "refresher" seminar, and attended the Community Associations Institute's (CAI) Annual Law Seminar, including a

session on “Association Law 101.” This course should interest and prepare private lawyers for practicing “Community Association Law.”

Election Services

A growing number of communities are experiencing disputes over elections. Failing to adhere to bylaw requirements for quorum and notice are invalidating elections and actions by improperly elected boards. In August 2018, Chancery Court invalidated board actions and ordered new board elections overseen by a Special Master, when board failures to adhere to bylaws “snowballed.”

Several communities approached the Office of the Ombudsman beginning in 2017 with their intention to request election services. Several communities require not only election of directors, but referenda on specific topics. Although the Office of the Ombudsman agreed with each County Election Department, we provided services for one complex condo election in 2018.

In 2018, we formalized the protocols for requesting election services, consistent with the Act. They now appear on the Website with form documents: a Petition from 15% of the voting interests to the Office of the Ombudsman; a form resolution for a board; an information sheet for a community to summarize election requirements from its bylaws; and a tripartite form agreement between the Ombudsman, the community and Department of Elections. Fees, required by the Ombudsman’s Act for election services, are the same whether provided by the Office of the Ombudsman or the Department of Elections.

In 2018, with assistance from the New Castle County DOE we provided vote monitoring and vote counting for a two phase, condominium and townhouse condominium community in receivership. It was to elect its first board of owners as it transitioned from several years of receivership. The community had five levels of “weighted” votes, for a board of nine to serve initially staggered terms. DOE helped plan the approach to vote counting; prepared a clear ballot with each of the five weights assigned. Owners signed in at tables assigned to the “weight” of their unit vote. Votes were sorted, sealed in DOE Ballot bags, then removed to DOJ for counting. A team of DOJ volunteers assisted in the complex vote tallying of the weighted votes. The team verified, reviewed and tallied the votes. Then a DOJ forensic CPA “tested” the tally before we reported the results.

Database of Community Contacts

The Ombudsman’s Act charges the Advisory Council to advise the Ombudsman on “The development of mechanisms for **registration of common interest communities** within the State or other political subdivision.

We receive many inquiries asking who an owner can contact in a community. We often facilitate the request by providing information from the Division of Corporations Annual Franchise Tax Report, which requires identification of directors.

The Division of Corporations has data that might allow registration of common interest community contacts, and requires annual updating. Annual Franchise Tax Reports contain all the information for registration, including a database with mail or email contact of virtually all Delaware common interest communities. However, since the only format available is text-only, individually down-loadable PDF, it is not amenable to creation of an annual electronic database with the resources available to the Office of the Ombudsman.

A meeting with representatives of Corporations was not productive in resolving this obstacle. For the time being, the Ombudsman uses its access to the Corporation's search database to search and save individual Annual Franchise Tax Reports if we acquire resources to convert the information to a searchable electronic database. We collected Franchise Tax Reports on less than 1/10th of the estimated 3000 common interest communities in Delaware.

We continue to look for ways to access this information, without creating an additional bureaucracy for registration of common interest communities at increased expense to taxpayers or common interest communities. A few states have done that while others use annual franchise tax reports.

Special Projects:

- **Recording Bylaws and Amendments**

Since the 2009 enactment of the DUCIOA, all communities, large, small and even exempt from other parts of DUCIOA, must have and record bylaws and amendments. In 2017, the Ombudsman worked with the New Castle County Recorder of Deeds on recommended forms for finalizing **recording of bylaws or amendments**. Case law is clear: boards must amend bylaws according to their stated requirements, or the amendments and the actions taken according to them may be void or voidable. Some communities never recorded their bylaws, or amendments. Changes to State law in 2016 law permit County Recorders to waive recording fees for community association documents. The State waives its portion of recording fees when the county does. To date, only New Castle County records community association documents without charge. In 2017 the Ombudsman met with Kent and Sussex officials to encourage use of this new statute as a community service.

Communities without recorded bylaws seem to have the worst problems. In one community, the president denied there are or were bylaws; failed to conducted elections for years; and avoided application of the Delaware General Corporation Law, which often defers to the bylaws. The Office confronts this "Catch 22" in some older communities.

- **"Collecting Delinquent Assessments"**

In 2018, the Ombudsman and the Advisory Council completed work on our so-called "Cookbook for Collections" project, which resulted in a guide to **"Collecting Delinquent Assessments"** using Justice of the Peace Court Personal-Debt Lawsuits without a lawyer. Advisory Council completed the Guide, aimed at self-managed communities in early 2018.

The Office rolled-out the Guide at workshops in each County. The first, in Kent County, attracted roughly 200 attendees. Each workshop included a demonstration trial of a “personal debt action” before a Justice of the Peace assigned by Chief Judge Alan G. Davis. The assigned Justices were the stars of the presentations! Each commented and explained terms and procedures during the demonstration trial and answered many questions. The final Guide is on the Ombudsman’s website in its electronic version, available for download, containing live links to nearly 30 items in the hard copy Appendices. Paper copies are available on request, at presentations and workshops, and now at the 4 *civil* Justice of the Peace Courts statewide.

- **Condominium Insurance Claims**

Some condominium communities and property managers were not reporting **homeowners’ insurance claims** to the Association’s primary insurance carrier. The association’s policy is often primary for the damage incurred to common areas. In 2018, the Ombudsman reviewed the Insurance Department’s draft of its “Bulletin 27,” which requires insurers and property managers to take certain steps for claims at both the homeowner level and the Association level, and to recognize the homeowner’s claims while acknowledging the Association insurance is primary.

Investigations

In 2017 and 2018, the Ombudsperson issued subpoenas for bank and other records involving four communities throughout the State based on “red flags” reported to the Office, directly or through Internal Dispute Resolution, and usually ignored by the board.

Final Thoughts

At the link for “Sign-up for Our Email List,” I hope you will sign-up to receive email notices of legislative changes and educational opportunities such as the “Board Leadership Workshops” or request copy of the guide to “Collecting Delinquent Assessments.” We expect to again offer presentations in each county in 2019, and send reminders of these events with reminders of such things as the due date for filing Annual Franchise Tax forms using our email list.

Please look over our new web content: “Collecting Delinquent Assessments,” and our “Election Services” tab. At the link for “Information for Homeowners,” you will find direct links to many publications of the Community Associations Institute (CAI), including its book “Introduction to Community Association Living,” and to CAI’s Foundation’s “Best Practices Reports” on important topics, available free.

Christopher J. Curtin
Deputy Attorney General
Common Interest Community Ombudsman

Annual Report

INQUIRIES AND COMPLAINTS HANDLED BY THE OFFICE

The Ombudsperson Act requires the Ombudsman:

"To contact declarants, common interest community associations, the executive board of a ... community association, unit owners ... and other interested parties to inform them of the services available through the Office." 29 Del. C. §2544 (1)

The staff of the Office of the Common Interest Community Ombudsman consists of the Ombudsman and a shared senior paralegal. The Office fields many calls and emails every day, among myriad other duties.

The discussion below of "Concerns Expressed" by members of common interest communities details many types of calls. Many are questions about the procedures of the new "Internal Dispute Resolution" process created and required by the Ombudsperson Act, or the next step in the process to file the complaint with the Office. We answer many other questions and inquiries by reference to a community's bylaws, or to the information available on the Ombudsperson's website. We answer many more by a general, nonbinding explanation of the rights and responsibilities and the processes available under the law and the governing documents of the community.

The Act explains that:

- The Ombudsperson is not the attorney for declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties;
- No attorney-client relationship is implied or established by the Ombudsperson's communication with any persons, and
- The Ombudsperson may not act as, or appear to act as an attorney in a legal action brought by any person.

29 Del. C. §2544 (2).

This is because of the Ombudsperson's duty to provide neutral service in mediation, arbitration or other Alternative Dispute Resolution. The Ombudsperson must refer matters to other divisions or agencies where appropriate.

Inquiries

The statistics do not capture all contacts with members of the common interest community, since the mechanism for capture were not part of the original implementation of the Office.

Beginning, in 2016 new systems captured more contacts, but were revised from 2017 forward.

Inquiries come in through telephone, email, and "Contact & Complaint" forms. We do not have complete statistics on telephone calls, but the Ombudsman took hundreds of calls in 2017 and 2018. Our indomitable paralegal assistant handled hundreds more. The Office receives most "Inquiries" seeking information by email. A few Inquiries required a review of governing documents. Inquirers filed those using Contact & Complaint forms.

Email Inquiries

The Office receives and responds to many email and telephone requests for information daily. We try to get information back to the inquirer within 24 hours. Most often, we must inform the inquirer that the issue must first go through the IDR process before the Act permits the Office to review the matter. While some seek only general information, others may require a private attorney.

The Ombudsman answered 552 substantive email inquiries in 2016, 656 emails in 2017 and 735 in 2018. This represents a trend of 15% to 17% increase over each prior year.

Before the website was operational, the Office mailed or emailed many copies of the Internal Dispute Resolution form and procedure to community members. We estimate that only 1-10% returned as Complaint forms for review. We continue to hear from many that the IDR process resolved complaints, with no more contact with the Office than reviewing the website.

Email Inquiries Received/Responded

The limited staff of the Office of the Ombudsman also experienced tremendous growth in the number of emails receive and responded to, in addition to the growth in email inquiries. In 2016, we estimated that we had hands-on 11,000+ emails. In 2018, we estimate (from Microsoft Outlook counts) over 12,200 emails, excluding irrelevant, unread solicitations, and unrelated emails.

Post-IDR Complaints for "Review"

Some HOA boards never even responded to complainants using the IDR process. The Office accepts those as Complaints if there is no response in 20 days after delivery of the complaint to the board. Although the number was small in the first year, in 2016 the Office was overwhelmed with complaints seeking complex, time-intensive reviews. Unfortunately, that trend continued through 2017 and 2018. Sometimes the respondent board refused to respond, or responded but refused Alternative Dispute Resolution.

Sometimes we require additional information from incomplete submissions. Sometimes the complainant did not first attempt Internal Dispute Resolution. Often, there is not enough information provided for us to determine whether or how much of the DUCIOA applies, or whether the community adopted any part of it. Some condominiums elect to continue to follow the Unit Property Act. Sometimes governing documents are silent on a specific issue, and DUCIOA may "fill-in-the-blank." Sometimes, bylaws conflict with mandatory

sections of DUCIOA, so DUCIOA may come back into play. We often counsel complainants to complete the statutory requirements that trigger our review.

Sometimes the General Corporation Law or Robert's Rules of Order answer a question. The Office offers ADR in nearly every Post-IDR review. Sometimes the parties agree to ADR before review is requested or complete. Sometimes the complaint requires the assistance of a private community association lawyer.

Several complaints involved HOA boards that did not follow bylaws about:

- Election or other procedures, amending bylaws, notice of meetings, open meetings...
- Budget requirements, Reserve limits, access to financial and other records....

Others are more complex and require involvement of County governments about systemic problems, e.g. release of contractors' bonds without adequate inspection, even violations of Americans with Disabilities Act accessibility requirements for sidewalks and driveways.

Several Boards did not respond to, or even refused delivery of the IDR, or ignored the Ombudsman's request for the board's position. Sometimes the Ombudsman's inquiry apparently caused compliance with the bylaws, or resignation of an officer or director, or return of books and records after elections. In appropriate cases, the Office issued subpoenas to an association or a bank, especially if circumstances suggested theft of funds. Several complaints were withdrawn after the Office requested information.

Received: At the end of 2018 we have 145 open matters for "Review" and another 25 not yet entered in the system (owing to lack of resources).

Resolved: Through the review process.

Pending: a number, not currently available, are open for monitoring, most for additional information or scheduling.

Alternative Dispute Resolution

Mediation: Parties requested and scheduled mediation only a few times. In 2017 and 2018 several parties requested mediation, but the opposing party refused. In several matters, an owner agreed to mediation, but as they learned more about the process changed their mind. This happened with several residents of one troubled community. No mediations were conducted in 2017 or 2018 because the parties refused.

In three instances in 2017, and two in 2018, a complainant requested referral to the Court of Common Pleas Community Mediation program, which accepts referrals only from law enforcement agencies. The Office made the referrals. This Office also referred several complaints to the State Human Relations Commission, in cases involving apparent bias or discrimination.

Binding Arbitration: in 2017 parties in three matters agreed to binding arbitration, one settled, and two proceeded to arbitration with a written opinion and order. In 2018, several complainants requested binding arbitration, but the board refused, instead offering to mediate. The complaint refused mediation. There were no binding arbitrations in 2018.

Board Initiated ADR: In two communities, the board asked the Ombudsman to offer ADR to a homeowner, before the community sued. The Office extended a non-threatening invitation to conduct ADR to each homeowner, explaining this was an opportunity to avoid a lawsuit. However, no owner accepted. Instead, one owner resolved his dispute directly. The Office did not receive a request to review the matters raised by the board in the other instances.

Expectations: As we develop the database of community contacts the Office will send an announcement about the Office and the website, and the availability of IDR and ADR. The Office expects that the number of requests for review after IDR will increase significantly.

EDUCATION AND OUTREACH EFFORTS

The Act requires the Ombudsperson:

"To organize and conduct meetings to educate declarants, ... community associations, the executive board of a ... community association, unit owners ...and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community." 29 Del. C. § 2544 (3)

In 2017 and 2018 the Office received most requests for outreach during telephone calls or by email. The Website now offers a direct email link to request a presentation by the Ombudsman, or to join the mailing list. If a community has specific concerns that may require more preparation or review, a community can request a presentation using the "**Contact & Complaint**" form and include information specific to the community, including copies of its governing documents. The form is available, and "fill-able" on the Website.

Education Efforts

In 2017 and 2018, the Ombudsman made 30 and 21 presentations respectively to homeowners' associations, umbrella groups, and resident groups throughout the State to introduce the Office of the Ombudsperson, answer questions, and explain important points such as:

- The need to adhere to governing documents.
- The DUCIOA's requirement that all communities even if exempt, record their bylaws.
- The reason for and importance of honoring quorums.
- The right to access to HOA documents including financial information.
- The importance of proper accounting and fiscal procedures for protection of the homeowners association's money.
- The rules and procedures for running effective meetings.
- The ability of an association to use Justice of the Peace Court "Debt Actions," without an attorney, to recover unpaid assessments, as a supplement to liens.

The Ombudsman made presentations to groups as small as four board members, to "umbrella" and other groups, some with 100-200 attendees. The Ombudsman makes most presentations after business hours or on weekends, often driving two or three hours roundtrip.

Besides Advisory Council and Committee meetings, the Ombudsperson met with or conferred with city (Newark and Wilmington), county government representatives (New Castle Kent and Sussex), citizens and legislative committees (Delaware Legislative Council, New Castle County), and State Legislators, agencies (DNREC, DelDOT) to discuss issues affecting common interest communities and areas of mutual interest addressed by services offered by the Office.

- **Public Workshops: Joint CAI Board Leadership Development Workshop**

The Office of the Ombudsman teamed with Community Associations Institute (CAI) for public educational programs. The Act required CAI to appoint a member to the Common Interest Community Advisory Council. CAI is a nonprofit industry group that provides information, educational materials, certification of professionals, presentations and other resources to those living in, managing, insuring, and representing common interest communities.

In November 2017 and 2018, the Ombudsman and CAI continued the series of jointly offered CAI “Board Leadership Development Workshops” aimed at board and association members, for a basic understanding of the documents creating common interest communities and basics such as collections of assessments and enforcing community bylaws and restrictions. The workshops have been a November offering each year since 2015. The Office sent flyers, emails and Attorney General’s Tweets, and newspaper advertising announcing the program. CAI normally expects 15 to attend this Workshop, but we have exceeded twice that in each year beginning in 2015, when 50 attended. In 2017 and 2018 approximately 35 attended each year. The workshop is an all-day, interactive presentation. The attendees remained engaged and ask the presenters pertinent and challenging questions. The attendees consistently give the workshop high marks. A few County Council members offer to pay the modest fee for members of problematic communities.

In 2017 and 2018 the Ombudsperson and the Advisory Council presented a similar but “home grown” Homeowner’s Association Training Workshop throughout the state using Advisory Council members and in one, a Justice of the Peace who described the use of the Court for Personal-Debt lawsuits and post-judgment tools to collect delinquent assessments, a topic not covered by the CAI presentations. One at the Lewes Library introduced the Office and HOA governing principles to 85+ attendees. Others included presentations for property managers, owners and directors at the Dewey Beach Lions Club; Introduction of the Office and Collections policy at a Senator’s “District Maintenance Corp. Workshop”; and a Representative’s meeting with Sussex Land-Use representatives, focused on a slow responding developer, among others.

- **“Collecting Delinquent Assessments” Without a Lawyer- Workshops**

Collection of delinquent annual assessments continues to be a topic of high interest to all HOA’s and condominium residents, throughout the State. Most boards and residents are unfamiliar with unique Delaware-specific processes for collection. While most are familiar with an association’s authority to record liens on the property of delinquent unit owners, most find foreclosure or waiting for an owner to sell, too expensive or too remote for immediate funding needs. *Most boards are not familiar with the rules of the Justice of the Peace Court that permit a corporation to designate a non-lawyer officer or designee to appear in JP Court on behalf of the association to collect delinquent assessments through “Personal-Debt” lawsuits.* Many are also unfamiliar with the availability of processes for enforcing or executing on a judgment through wage garnishment or seizure and sale of personal property, or other real estate.

The Advisory Council prepared a Best Practices "Cookbook" style guide, which the Office completed in 2018 and introduced in educational workshops in each County. The Advisory Council, Ombudsman and the Justice of the Peace Court presented the workshop on "Collecting Delinquent Assessments" in each County. Each presentation featured a demonstration trial to an experienced Justice of the Peace, who heard a presentation by either a lawyer guiding the testimony from a lay-board member, or an appointed non-lawyer board member.

The Advisory Council is planning programs for HOA board training and targeted 2-3 hour presentations for 2019.

- **Outreach Efforts**

Outreach efforts included offering and making presentations outside the Office when requested, email and direct mail to the growing database of common interest communities, providing Tweets for the Department of Justice to disseminate, newspaper reports and advertisements about workshops, and encouraging members of the legislature and the Advisory Council to notify their association members to spread information about the Office, its services, and website.

- **Meetings and Presentations**

In 2017 the Ombudsman made 30 presentations to associations in all county about the Office and the services available, and participated in another 15 meetings about the Office besides the educational presentations described above.

In 2018 the Ombudsman made 21 presentations to associations in each county about the Office and the services available, and participated in another 15 meetings about the Office besides the educational presentations described above.

The Office and the **Advisory Council** continued to meet every other month, usually on the third Wednesday, rotating through each county. The public is invited to attend and ask questions at each meeting. We send notices by email to our list, and post announcements on the State Public Meeting Calendar.

The meeting places and times are posted on our website with the Advisory Council roster, and in this Report. Note that for 2019, the meeting date is now usually the 4th Wednesday of the month (except January and November) and the time is now 1:00 pm.

- **Information Gathering**

The Act requires the Ombudsperson "*To organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing common interest communities in the state. 29 Del. C. §2544 (17) and to report the concerns expressed by members of common interest communities to the Office. 29 Del. C. §2544 (16) c.*

The Ombudsman asks at each presentation workshop and Council meeting for comments concerning issues confronting communities, owners, board members and other

interested parties email or call with concerns every day. Pads and pens are available at each presentation or meeting.

Video

Senator Hocker's staff recorded the Ombudsman's March 1, 2018 Sussex County Workshop and panel discussion about the Office, Transition issues, and governance. It is posted on Senator Hocker's Facebook page, and was reported in the March 2 issue of the newspaper. The Ombudsman explained the differences between common interest communities and civic associations, and the problems minimized by recording bylaw, as now required by DUCIOA for all common interest communities.

Email

Nearly every response to an email seeking information includes a link to the Ombudsperson's Website. The Office emailed fliers to those in the database announcing the Leadership Development Workshops and Collecting Delinquent Assessment workshops, and other presentations.

The Office is still developing a still incomplete database of contacts for homeowners associations for each county. Kent and New Castle Counties have databases, based on storm water management records or manual searching, but both are incomplete since they do not include the 57 municipalities in Delaware. Sussex County does not have a similar database, but members of the Advisory Council continue to provide contact information for many Sussex County common interest communities and property managers. In 2018 we added communities from the State Snow Removal Reimbursement Program.

Working with the Division of Corporations, we are still exploring a more comprehensive database using Annual Franchise Tax Reports, but the project is fraught with issues. The sources are incomplete but the combined databases should eventually complement each other. The Office used this limited database to announce the CAI Leadership Workshop, and other educational opportunities.

Tweets

The Department of Justice periodically issues tweets. This Office submitted Tweets on educational opportunities, workshops, new website features, upcoming public forums and more.

Mail and Print

The Office mailed fliers to those in the database announcing the Board Leadership Development Workshop, and providing information about the Office and the Website. Since 2015, the Office mailed the Ombudsman's report of some unresolved Post-IDR complaints to every member of the affected community, an approach we will continue. There are often 200+ affected homeowners in each community. These letters also explain the Office and give the link to the Ombudsperson's Webpage. It appears this approach will be necessary again in 2019 based upon matters begun in 2017 and 2018.

In 2018, we advertised several programs in newspapers in each county. Members of the General Assembly advertised one of the largest, attended by 200+ at the Roxanna Fire Hall.

[Page intentionally left blank]

CONCERNS EXPRESSED TO THE OMBUDSMAN

The Act requires the Ombudsperson “*To organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing common interest communities in the state.* 29 Del. C. §2544 (17) and to report the concerns expressed by members of common interest communities to the Office. 29 Del. C. §2544 (16) c.

The Ombudsman made presentations and conducted question-and-answer sessions to answer community questions and hear the concerns in each county. Several legislators, police community liaison officers, and county officials participated in public meetings to discuss issues and services affecting each county.

In 2017 and 2018, members of common interest communities expressed many and varied concerns to the Office of the Ombudsperson. The Internal Dispute Resolution Process resolved most issues and concerns. Others suggested the need for education and a few suggested the need for legislation:

Bylaws

One overarching issue encountered in several contexts by the Office in 2017 and 2018 involves bylaws. Several older communities in each county reported that declarants did not complete, deliver, or record bylaws, or that the association lost them. This result in boards enacting special bylaws without following the procedures to do so, or enacting a bylaw conflicting with or not authorized by the recorded declaration or certificate of incorporation.

A second context is in complaints of boards not following the bylaws, and not providing bylaws to owners to review.

Since 2009 the DUCIOA requires *all* communities, large or small, whenever created, to have and *record* bylaws. When recorded they become public notice of their terms. The Ombudsman explains at public meetings, workshops, and many emails that the requirements set out in the bylaws for operation of the association, must follow the governing documents and that changes not authorized by the governing documents may be void or voidable. That puts the actions and contracts of the association in jeopardy. The Mentoring Committee reviewed at least one board’s bylaws that conflicted so greatly with the declaration and certificate of incorporation that the board had the association’s lawyer review, adapt and modernize the governing documents and bylaws.

In 2017 the Ombudsman contributed to the New Castle County Recorder of Deeds effort to recommend “Best Practices” for certifying that Bylaws were properly enacted according to their terms before Recording. The Recorder posted the recommendation to his website.

Most common interest communities are still unaware that:

- DUCIOA requires all communities to have and record bylaws consistent with Sec. 81-306.
- The Ombudsperson’s Act requires each community to include an “Internal Dispute Resolution Process” in its bylaws or resolutions, or must use the Ombudsman’s Template available on the Ombudsman’s website. 29 Del. C. § 2544 (8).

- Bylaws cannot exclude delinquent owners from voting. 25 Del. C. § 81-302 (11).
- Usually neither the president alone nor the board can amend bylaws without approval of the majority of the association.
- New law requires Recorders of Deeds to waive all State and county fees for recording bylaws, if the county first waives its fees, like New Castle County.
- Failure to follow or properly amend bylaws may make actions taken in reliance on the invalid bylaws “void or voidable” and unenforceable.

Concerns Expressed, by County

Kent County

In Kent County, concerns expressed include:

- The lien process for collection of delinquent assessments is expensive and requires sale of a home before collection, a long time to wait in the current economic climate. This continues to be the most frequent complaint in each county. The Ombudsman explains the availability of a “personal debt” lawsuit in Justice of the Peace Courts against homeowners in default of their assessments. That does not require an attorney. This generated interest at each presentation. There were further explanations that a personal judgment, could lead to wage garnishment, or seizure and sale of personal property resulted in an additional discussion. Because of the widespread interest in this, the Advisory Council committee on Improving Collection of Assessments developed the guide “Collecting Delinquent Assessments” and conducted workshops based on it in each county in 2017 and 2018. The Advisory Council is planning more educational presentations on the subject in 2019.

Sussex County

In Sussex County, homeowners continued to complain:

- Incomplete communities with incomplete, poor roads and unbuilt amenities due to amendment of declarations after a declarant or developer’s bankruptcy or sale of the development project. This led to meaningful conversations with the County Administrator, who has been very active in identifying and correcting weak parts of the County’s process and addressing incomplete communities. In 2017 the County used posted bonds to complete roads in some communities, while continuing to have the developer finish other aspects of the community. The County used a “Memorandum of Understanding” with developers in troubled communities. The memoranda record understandings of a timeline for correcting issues, with future permits issued as the issues are addressed.

New Castle County

In New Castle County, the Recorder of Deeds proposed an ordinance waiving county recording fees for new or amended community association governing documents. When that passed, he also succeeded in convincing the State to enact similar legislation directing the counties to waive State recording fees if a county first waives its recording fees. The Ombudsman worked with New Castle County to publicize this change, including discussion with county representatives in Kent and Sussex.

The Ombudsman and the Real and Personal Property Section of the Bar drafted “Best Practices” for properly adopting and certifying bylaws before recording.

In 2018, the Recorder responded to complaints of unlawful, discriminatory restrictions in deeds and deed restrictions.

- The Recorder and interested groups supported legislation allowing Recorders to “redact” (remove or obscure) offensive, illegal, discriminatory language from community association documents upon application by a community member, and after review by the County attorney, without charge. The Ombudsman contributed legal research and review of the application after the law passed.

All Counties

In each county this Office encountered communities that need to record their bylaws as now required by DUCIOA, communities that lost their bylaws, and communities that failed to amend their bylaws properly. This is disruptive to owners in a community entitled to vote on changes and rely on the text of bylaws. Actions taken in violation of the bylaws may be void or voidable. Recording community association documents is without charge only in New Castle County. One community that recorded improperly amended bylaws paid more than \$260 to record them, and now may record corrected bylaws without charge.

Concerns Expressed By Community Members

Concerns of Purchasers

Artificially Low Assessments During Sales

In all counties, there is concern that developers subsidize actual costs for maintaining common areas to keep assessments unrealistically low, for advertising and sale purposes. Sticker shock sets in when the first homeowner controlled board formulates its first budget or first reserve fund. Purchasers who rely upon the developer’s representations feel cheated.

Late Disclosure of Deed Restrictions and Rules

The sale process in some communities is troubling. Several sellers did not provide the governing documents until the day of, or at settlement. By then the purchasers could not adequately review or understand these complex documents. Some owners purchased in communities they might not have considered if they had more time to review the restrictions imposed by the governing documents. Other communities posted the governing documents

on the website for anyone to review. Sales staff in other communities discuss the realities of living in a common interest community before contracts were signed. Realtors in some states must give house-hunters a sheet when they show a home in a common interest community, explaining the obligations that come with that. Some shoppers complain that their realtor did not know certain communities are common interest communities.

Concerns of Homeowners

Transition

Another universal concern is the lack of specific requirements or information or training of community members for “Transition” from developer to homeowner control of an Association, especially in Kent and Sussex counties. All counties inspect for compliance with the plat plans. But, owners complain that the inspectors miss items, like plantings noted on the plat, or replacing dead trees and shrubs, or a building that violates the declarations, or undisclosed underground storm drains.

The DUCIOA requires post-2009 communities to have unit owners on the board during Declarant control. This produces homeowners better equipped to take control of their homeowners association. A good transition involves working homeowners onto the board and committees as training. A few states require elected owners to attend training in HOA operations to serve. Many boards are adrift, not knowing how to operate a successful nonprofit, nonstock corporation or association. They report that at transition, the developer dropped off a set of keys, and there was no effort to introduce the new board to its duties and responsibilities. Problems that result range from failure to file Annual Franchise Tax Returns and Federal forms, to poor financial controls, like a treasurer having blank checks signed, and balancing the bank statement without oversight. In some communities, this resulted in significant theft of homeowners’ funds.

Lack of Communication and Transparency During Declarant Control

- Many owners report disregard of requests for access to financial records, and other information from declarant controlled boards and their property managers. The right of owners to access financial and other books and records of their association within 5 days of a request is protected by the DUCIOA and the General Corporations Law,
- Communities report declarants’ refusal of audits during and after declarant control, or providing audits that do not conform to DUCIOA requirements. The Ombudsman circulated a statement of requirements by an auditors’ professional association, detailing the requirements for one of the specific DUCIOA transition audits.

Owner or Member Apathy

Community apathy resulting in lack of quorum for elections or voting on issues continues to be rampant in each county. The Ombudsman discusses various strategies for increasing community participation at many presentations and workshops and in many emails. The Office added links to Community Associations Institute’s “Best Practices” reports on its website. These reports provide discussion and useful checklists and sample documents for several important issues that associations face, including “Governance,” and building

community spirit. The Ombudsman arranged for CAI to place its "library of publications" in one public library in each county. The State Librarian catalogued them on its website and, on request, will transfer a publication to any public library in the State. The Ombudsman detailed several other CAI booklets on its website. Many are available at no cost at the CAI websites.

Skills for Running Meetings

Lack of knowledge of proper procedure for running meetings is a frequent obstacle to proper operation of homeowners' associations. All of our Board Leadership Workshops cover basic parliamentary procedure. The Office includes simplified Roberts Rules of Order publications on the website. Several Advisory Council members are very experienced in procedure, including one parliamentarian. One assisted by explaining proper procedures to groups. One community we are working with benefited from the Office and Advisory Council members demonstrating proper meeting procedures following simplified Robert's Rules of Order. The Ombudsman distributes booklets on "How To Have A Successful Meeting" and "The A-B-Cs of Parliamentary Procure" after attending several angry, disorganized board meetings. Copies are available on request.

Failure to Comply with or Adhere to Bylaws

This continues among the most common and serious complaints received from owners and even board members. Complaints usually result from failure of the homeowner or the Board to read governing documents. Specific complaints include:

- Elections-
 - The Board fails to use the mandatory Nominating Committee, or Election Committee.
 - The Board fails to follow Notice requirements.
 - The Board fails to follow quorum requirements.
 - The Board fails to use proxies, when authorized, and fails to solicit new board members, or creates obstacles to stay "entrenched."
 - The Board changes directors' terms of office, making them conflict with the bylaws, and without changing the bylaws.
 - The Board fails to provide proper ballots or proxies as stated in the bylaws.
 - The Board or president changes the bylaws at will, without a required vote of members and without recording the bylaws or amendments according to the bylaws.
- The Board enforces restrictions and bylaws selectively against owners while Board members violate the same bylaws.

- In two troubled communities, the board discriminates against individuals, and harass bully and even defame individual owners. (Offers to mediate or arbitrate were refused by each board.)
- The Board waives payment of assessments for board members who provide services to the association, like grass cutting, or awards a contract for grass cutting to a board member or relative without offering the community the same opportunity, or following tax requirements.
- The Board extends the use of assessments beyond the authority in the bylaws. For example:
 - The Board spends or budgets funds for Community Events while bylaws limit expenditures to maintenance of common areas, yet expressly describe the procedure for extending the use of the assessments by vote of the owners.
 - The Board takes on responsibility for infrastructure expenses, in a neighboring community without Association approval.
- The Board inconsistently applies standards for fences and other architectural features.
- The Board refuses to make reasonable accommodations under the Fair Housing Act.
- The Board fails to keep minutes of board or Association meetings, or fails to provide them on request of an owner.
- The Board fails to arrange audit of Association finances required in the bylaws.

Failure to Provide Reasonable Access to Association Records

- Many Boards continue to refuse to make association books, records, and financial documents available to owners upon request, even though both the General Corporation Law at 8 *Del. C.* §220, and the DUCIOA at 25 *Del. C.* §81-318 require it and are enforceable in Court or through Ombudsman's ADR when the parties agree to it.

Homeowners Report:

- Unprofessional and obstructive responses to requests for access to or copies of documents made to management companies and boards.
- Lack of transparency and lack of response to requests for access to documents and other information by owners of damaged property.
- Obstructive interpretation of a “proper purpose” for requesting association records.

Refusal to Resolve Owner Complaints Internally

The Ombudsperson's Act requires all communities to have a written “Internal Dispute Resolution” (IDR) procedure, or to use the one created by the Ombudsperson according to the Act. So far, only one community offered a pre-existing IDR process that a homeowner may use for a complaint about the Board. Many bylaws permit a Board to complain informally against a homeowner. Homeowners report refusal of Internal Dispute Resolution for such matters as:

- Requests for access to Association records.
- Complaints about violation of bylaws about election procedures.
- Discriminatory enforcement of rules and Architectural Review standards.
- In 2017-2018 several owners complained that boards denied basic due process requirements of notice and opportunity to be heard or to present evidence, though required by bylaws or rules.

Raising Assessments and Failing to Raise Assessments.

Homeowners report complaints about mandatory annual assessments, including:

- Disputes over including expenses of social events in assessments.
- Disputes over what is a “capital improvement.”
- Disputes over what is a “common area” or a “limited common area.”
- Disputes over what the “Reserve Funds” covers.
- Disputes over the need for a reserve fund for “Contingencies” separate from a “Repair and Replace” reserve, exclusively for capital expenses.
- Disputes over funding for the “Reserve Funds.”
- Failure of the Board to collect delinquent assessments from owners.
 - Collecting delinquent accounts costs more than is recovered.

- Failure of the Board to collect, inciting others to refuse to pay.
- Failure to use Personal-Debt lawsuits in Justice of the Peace Court without a lawyer.
- Charging fines or fines too high, or higher than authorized, for late payment or rule violations.
- Refusing to consider unusual circumstances such as loss of a job, or hospitalization for illness or injury justifying a payment plan.
- Refusing to collect or fund reserves in condominium and non-condominium communities with amenities.
- Charging the wrong interest rate, and sometimes the full annual interest rate *each month*, or charging interest on penalties.

Failure to Make Board Meetings Open to Association Members

Some Boards exclude Association members who are not directors for various reasons, including:

- The Board claims incorrectly that a meeting of the Executive Board is an “executive session” that is closed to the owners.
- Some Boards hold meetings in a resident’s house and exclude other owners.
- Some Boards do not allow comments from other owners during Board meetings.

Failure to Use Roberts Rules When Required in Bylaws

Not every Association must adhere to Roberts Rules of Order. Even when they do, owners report:

- No agenda.
- No prior meeting minutes for approval in advance.
- No Quorum.
- No minutes taken, or minutes recording every conversation instead of every action.

Unfair Election Procedures

Complaints about the Board include:

- No nomination process, only a vague request in a notice of an annual meeting or refusal to add name to ballot for false or incorrect reasons.
- Ignoring quorum requirements for election of directors.
- Ignoring written ballot requirements in the bylaws.

- Ignoring secret ballot requirements in the bylaws.
- Ignoring procedures for directors electing officers.
- Misunderstanding the DUCIOA and Delaware General Corporation Law authority and requirements for voting without meetings.

Exemption from DUCIOA Where Annual Assessments < \$653 (after 7/2018)

Several owners, boards and communities with annual assessments lower than \$653 (after July 2018) complained that adopting the DUCIOA, with its provisions to impose statutory liens, and other beneficial provisions, is prohibitively expensive. Other sections that owners report as desirable for exempt communities include:

- 81-305: Termination of contracts and leases of declarant.
- 81- 308A: Executive board meetings, requiring open meetings.
- 81-309 (f): Ballots without meetings.
- 81-316: Liens and priority for HOA liens for assessments.
- 81-419 (a): Declarant's obligation to complete amenities identified in the plat unless labeled "Need Not Be Built."
- 81-421: Amendment of public offering statements after purchase.

State laws now requires a Recorder of Deeds to waive fees for recording changes to governing documents, if a county first does so, like New Castle County. This makes it a little less expensive to adopt some or all of DUCIOA as permitted in Sections 81-119 and 81-121. The Advisory Council is reviewing a draft amendment to the DUCIOA to lower the applicability standard to smaller assessment communities, consistent with the UCIOA, the model Act.

Unduly Restrictive Architectural Review Committees:

- Denial of applications for solar panels because unaware of statutes permitting solar panels despite restrictive covenants. *25 Del. C. § 318.*
- Denial of fences though many exist in the community, and singling out residents for enforcement.
- Allowing or refusing allowed plantings in stormwater control ponds and swales.
- Denial of changes for reasonable accommodation under the Americans with Disabilities Act.
- Refusal of political signs, solar panels and flags, contrary to State and Federal law.

Entrenched Boards

Problems reported include “autocratic rule”; lack of civility; personality clashes; ejecting residents for asking the board questions about finances; threatening to call police if questioners do not leave; and calling police on pretext about people who ask questions at board meetings; refusal to permit members attend board meetings; failure to adhere to bylaws on elections; use of funds without a required member vote; changing bylaws without a required member vote; conflict of interest through self-dealing on community expenditures....

Several outgoing treasurers refused to return corporate books, financial records, and instruments, to the corporate association, which owns them.

Failure to Provide Notice of Filing Liens to Collect Unpaid Assessments

- Owners report instances when they were not delinquent, but had to hire attorneys to save their homes from foreclosure.
- Absentee owners reported that they did not receive notice mailed to their unit since they live out of State, and the Association charged penalties and fees as a consequence.
- Owners were not notified that the Board filed liens against their property unjustly.

Declarants Amend Declaration after Sale of Units to Homeowners

- Extending the period of declarant control.
- Delaying declarant contribution to assessments contrary to bylaws in effect during sale to homeowners.
- Declarants eliminating advertised amenities after the sale, usually after sale of the development or after bankruptcy.

Failure of the Developer to Build Amenities Due to:

- Economic downturn
- Bankruptcy
- Sale of the development to third parties because of either of the above
- Delay in construction due to economic downturn-sometimes increasing the percentage sold for completion of amenities from 75% to 100%.

Road Issues: Owners Report a Number of Significant Issues

- Dedication to public use for State maintenance: Sussex County does not require developers to build private roads to State specifications so they cannot be dedicated to public use, and fail earlier than expected at association expense.
- Roads not built to Sussex County standards, fail early. Owners face high assessments for road restoration.

- Developers do not disclose the lower standards, so sale prices and assessments are artificially low.
- Declarant/developer failure to complete roads.
- County released bonds for unfinished or roads not to specification.

Lack of Communication and Transparency After Catastrophic Loss

Communities report disregard of requests for access to financial records and other information from the Board after a casualty loss, especially where insurance is exhausted, or remedies include uninsured betterment.

Misunderstanding of Application of DUCIOA to a Community or an Issue

There is widespread lack of awareness of, and understanding of the applicability of a portion of DUCIOA to preexisting communities, as detailed in 25 *Del. C.* § 81-119.

Theft of Association Funds by Association Treasurer

Several communities report serious financial red flags, such as boards not filing annual Franchise Tax Reports and not filing Non-profit, informational tax returns, or delivering checks signed in blank to the treasurer; refusal of access to books and records.... This Office issued subpoenas in several instances. One cleared a treasurer of all wrongdoing; another resulted in the arrest, indictment and conviction of directors for theft and conspiracy.

Concerns of Boards

Collection of Delinquent Assessments

This was the most common complaint received. Boards are frustrated that filing a lien against the property does not translate to collection of the delinquent assessments until sale of the property. Most found collecting on a lien through foreclosure prohibitively expensive and ineffective. Board members complain about:

- Expense of lawyers eliminates recovery. (Though most declarations authorize recovery of lawyers' fees.)
- No mechanism for determining a person's employer for wage garnishment. One complainant wants the judicial system to provide the information.
- Exclusion from DUCIOA for communities with less than \$653 annual assessment denies them "super-priority" liens.
- Boards open bank accounts, and sue without knowing the proper name of the HOA, impeding the Association's ability to collect or protect officers from liability.
- Boards can have New Castle or Kent County bill and collect assessment payments, but counties do not bill for late fees or penalties, nor undertake collection.

Sometimes payment to the county is timely but the association gets the county's distribution of funds on the county's schedule. This can make timely payments seem late to the Association. Debt collectors seldom check this.

- Third party Debt collectors often violate the Fair Debt Collection Practices Act.
- Debt collectors sue on assessments barred by the statute of limitations.

Enforcing Rules

A few communities seeking to enforce rules when faced with Owner refusal, asked the Ombudsman to offer ADR to the homeowner, instead of going directly to County Code Enforcement, in an appropriate case, or to court, over such bylaw or rule violations as:

- Parking unlicensed or disabled vehicles in driveways or the street.
- Parking business or trade vehicles with business advertising in the community.
- Operating a business in the community in violation of zoning or deed restrictions.
- Fence disputes when the fence complies with county rules, but not deed restrictions.
- Parking oversized vehicles like recreational vehicles for longer than permitted.
- Parking boats on the property.

To date, no offers resulted in ADR or complaints after IDR.

Failure of the Developer to Prepare Owners for Transition from Declarant Control

Inadequate preparation of homeowners for transition to homeowner control and operation by the homeowners' association is a significant problem. Volunteer non-lawyer boards are often ill equipped to manage the work of the Association. This is evident from the number of boards failing to file information returns to maintain corporate or non-profit status, poor accounting and financial controls and oversight, and lack of awareness of the need to adhere to the bylaws and other restrictions. Better developer/declarants create committees and homeowner involvement on the board, as a training ground to familiarize leaders with their future responsibilities. Some developers pay for board members to obtain training. Boards can do that. Better transitions result in better communities, and better reputations for the community and the developer.

Questions from owners for declarants include:

- What state or local laws or ordinances regulate the process of transition from developer to owner association, including timeline for steps involved?
- What is the Nominating Process for the new board, especially at end of developer control?
- What is the Voting process, including proxies?
- What is the process for education of the Board on their fiduciary and other responsibilities?

- What is the process for education of property owners on how common interest ownership communities operate, including what to expect from the board and management?
- What are the responsibilities of the Board and management to operate in a transparent (to owners) manner – regarding meetings, agendas, minutes, financial records, audits?
- How can the Property Owners Association collect delinquent assessments (how liens work, etc.)

Declarants Understating the Assessments and the Costs of Operating the Community.

There are concerns that some developers understate the assessments to promote sales of homes. Lower assessments make the community appear more desirable compared to other communities with similar amenities. Purchasers do not know the true costs to justify the assessments until after Transition.

At least one complaint alleged that the Developer did not comply with DUCIOA's Transition audit of funds received by the developer from the owners and paid by the developer. The "audit" letter provided was not from a Certified Public Accountant not affiliated with the developer. 25 *Del. C.* § 81-303(g).

Difficult Homeowners

Many Boards express frustration with a few homeowners who challenge everything the Board does, in ways that increase not only frustration, but also expense to the entire community by requiring an attorney to review all requests from these individuals. Problems mentioned include:

- Threatening suit that would interfere with negotiations bearing on Transition.
- Document requests that are voluminous, and stated to make it difficult to know what the requestor wants.
- Angry homeowners, who shout and disrupt meetings with demands or questions about matters not on the agenda.
- Statements implying that an owner intends to bring a weapon to a meeting.
- Statements that one can interpret as death threats.

Concerns of Board Members

Individual members of Boards also have concerns about how the Board is operating. Occasionally a director or officer will discuss filing an internal dispute resolution complaint with the board. Some officers or directors have resigned when confronted with violations of bylaws and common business procedures.

Failure of the Board President to Follow Bylaws for Elections, Expenditures, and Other Matters Involving Community Funds.

Failure of the Board President to Report Financial and Other Important Data to the Board including:

- Notice from IRS of failure to file multiple years of nonprofit corporation status reports.
- Failure to share financial reports with board members for months at a time.
- Discontinuing taking of minutes.
- Discontinuing board meetings.
- Discontinuing member meetings.

Refusal of Prior Board Member to Turn over Books and Records to Newly Elected Board, including:

- The financial account records and checkbooks.
- Other financial documents.
- Governing documents.

Residents Discharging Firearms in the Community (Skeet Shooting) despite Bylaws and Rules Prohibiting Firearm Discharge in the Community.

Concerns of Declarants

Few developers or declarants contacted the Office of the Ombudsperson. However, representatives from the building community informed the Advisory Council of several concerns.

- Concern that new legislation will over-regulate development of common interest communities.
- Individuals or small groups of residents, who are not on the Board, disrupt the Transition process by trying to micromanage the community with constant complex demands for records, and threats of lawsuits, that threaten to derail transition processes.
- Lack of standards for transition to homeowner management of the community.

Concerns of Other Interested Parties

Inter-neighborhood disputes over boundaries and liability for encroaching amenities. The Office of the Ombudsperson notifies parties to these disputes that the Office is available for dispute resolution.

LEGAL DEVELOPMENTS IMPACTING COMMON INTEREST COMMUNITIES

The Act requires the Ombudsperson to report on “Legal developments impacting common interest communities.” 29 *Del. C.* § 2544 (16) (d).

Legislation:

The Ombudsman commented on bills proposed or presented to the General Assembly, usually at the invitation of the sponsor.

In 2017-2018:

- In 2017, the Code Revisers corrected a technical-typographical error in the DUCIOA at 25 *Del. C.* §81-323 “Removal of members of executive board.” The legislation corrected a reference in the citation in clause (ii) of the first paragraph from “§ 81-303 (h),” which does not exist, to the intended citation “§ 81-303 (f).” This section applies to all communities including pre-existing communities. See *Beck v. Greim*, noted below.

Redaction of Illegal Restrictions from Association Governing Documents

- The General Assembly passed legislation allowing Recorder of Deeds Offices to redact or obscure unlawful, discriminatory language and restrictions from recorded land documents, upon application to the Recorder of Deeds, and approval by the County Law Department, at no charge to the property owner. The Governor signed SB 243 into law in September 2018, amending 9 *Del. C.* Ch. 96, by creating a new § 9628.

Case decisions:

2017

- *Fernstrom v. Trunzo*, Del. Ch., No: CV 2017-0518-PWG. The Master in Chancery enforced a contractual agreement in condominium instruments *requiring* alternative dispute resolution before suit. The Master found it enforceable, after determining the board’s attorney was not an “indispensable party,” though named in the complaint, and the complainant never sought ADR before suing.

2018

- *Bragdon v. Bayshore POA*, C. A. No. 2017-0539 PWG. V. Ch. Laster ruled from the bench, on a petition for preliminary injunction. The Court ordered new board elections for a community that apparently violated election bylaws, including meeting and election notices, failure to use the Nominating Committee, and failure to appoint an Inspector of Election to certify election results and include certification in the minutes, all as required in the bylaws. The Court relied on additional matters of corporate governance, as well. Members of the board, at a meeting not properly noticed, invalidly seated interim directors. The Board could not count those directors toward the 4/5 quorum requirement in the bylaws. The Court found actions taken in violation of the quorum requirement were invalid. The Court appointed a special master to oversee the conduct of the election. A transcript of the Order is available through the Ombudsman’s Office upon request.

- *Beck v. Greim, c/o Bombay Woods Maintenance Corp.*, C. A. No.10223-MG. A Chancery Court master observed,

“DUCIOA provides that only specified DUCIOA sections apply to pre-existing communities. [25 *Del. C.* §81-119]. If a DUCIOA section applies to a pre-existing community, then DUCIOA controls if there is a conflict between the DUCIOA provisions and the community’s bylaws or other governing documents. But if a DUCIOA section does not apply to a pre-existing community, then DUCIOA controls only if the matter at issue is not expressly addressed in the community’s governing documents.”

Under the bylaws, the majority of the directors could remove a director as an officer, but violated the bylaws by removing the director as a director. The bylaws authorized the *members* of the Association to remove a director, provided, at a special meeting authorized by the bylaws, on notice to the members, a quorum of 51% of the members entitled to vote at the meeting in person or by proxy, approved at that meeting. The master noted that the DUCIOA § 81-323 applies to pre-existing communities and controls. It requires the process specified in the bylaws for voting at the special meeting. There was no quorum at the meeting, no notice to the Association members, and no authorization for ballots obtained by door-to-door canvassing after the meeting.

Case Law of Note: 20 Year Limitations for Collection of Obligations Under Seal and “Mirror Image Rule.”

- *Sea Villa Homeowners Association, Inc., v. Lavine*, Del. C.C.P., C.A. No. CPU6–14–000330. Court of Common Pleas held, in a personal debt action against an owner for delinquent assessments, (as opposed to a “lien” against the home under DUCIOA § 81-316), the “obligation to pay assessments was evidenced by one or more instruments under seal, and therefore subject to the twenty-year common law limitations period” instead of the three year period for documents not under seal.
- *Saunders-Gomez v. Rutledge Maint. Corp.*, 2017 WL 1277682, at *2 (Del. Super. Ct. Apr. 3, 2017), aff’d, 189 A.3d 1288 (Del. 2018). Justice of the Peace Court held the owner breached her contract with the association by failing to pay her annual assessments, awarded \$1,989.05 to the association, plus attorney's fees, and post-judgment interest. Owner appealed to the Court of Common Pleas, which besides the JP Court damages, ordered the owner to pay other collections costs and the Association’s attorney’s fees, now \$8,975.83 as allowed by the fee-shifting provision in the Declaration. Owner appealed to Superior Court, alleging it did not have jurisdiction because the so called “mirror image rule” that Rule 72.3(f), was not satisfied because the complaint in CCP improperly referred to the maintenance declaration of an adjacent community, instead of the Declaration at issue, and CCP improperly permitted an amendment to correct that. Superior Court held the mirror image rule was satisfied since “the complaint on appeal presents no parties or issues other than those presented by the *original complaint* below.” References to the wrong maintenance declaration did “not change the essence of the pleading.

Once appellate jurisdiction is perfected, ‘parties may seek to amend the pleadings or otherwise add or dismiss issues or parties.’”

Owners’ “obligation to pay assessments is both created and evidenced by the sealed Declaration and her sealed Deed subject to the Declaration restrictions,” so, the twenty-year limitations period applied, as held in the cited *Sea Villas* case above.

The Supreme Court affirmed the judgment of the Superior Court. *Saunders-Gomez v. Rutledge Maint. Corp.*, 189 A.3d 1288 (Del. 2018)

[Page intentionally left blank]

RECOMMENDATIONS FOR CHANGES TO DELAWARE LAW OR COURT RULES TO IMPROVE REGULATION AND OPERATION OF COMMON INTEREST COMMUNITIES

The Act requires the Ombudsperson to report:

“Recommendations for changes to Delaware law or rules of court procedure designed to improve the regulation and operation of common interest communities made by the Ombudsperson and the Common Interest Community Advisory Council.” 29 Del. C. §2546 (e)

The Advisory Council’s “Change of Law Committee” is reviewing several proposals for changes to law or Court rules. Besides the subjects the Committee selects, the Ombudsman submits subjects for study for consideration, as issues are uncovered.

- One legislator requested a bill through Legislative Council to address penalties for false resale certificates, by restoring original portions of the UCIOA, including restoring punitive damages to penalties for willful violation of the DUCIOA, and extending the 5 day period for cancelling a sale of a home after receiving a resale certificate to the UCIOA’s original 15 days. The bill is under review by the Real and Personal Property Committee of the Bar Association.
- The Common Interest Community Advisory Council Legislation committee is reviewing a “clean-up” bill to correct a few typographical and other errors and sometimes to return several sections to UCIOA language. Some proposals would extend additional sections of the DUCIOA to more, smaller, lower assessment communities. Examples include open executive board meetings; some lien provisions, and others. Another proposal for discussion defines a Collection Policy for associations. The bill is under review by the Advisory Council Legislation Committed, which is still reviewing other issues identified in the 2016 Annual Report.

Topics Under Study By The Legislation Committee of the Advisory Council:

These topics do not represent specific proposals for legislation by the Department of Justice, the Ombudsman, the Committee or the Council at this time:

Under Study:

Common Interest Community Registration

The Ombudsperson Act charges the Advisory Council with advising the Ombudsperson about “development of recommendations for the registration of common interest communities with the State or other political subdivisions.” 29 Del. C. § 2546(f) (1) (d). This would assist the Office of the Ombudsperson at several levels, including providing contact information for every common interest community. The Secretary of State’s Annual Franchise Tax reports to the Division of Corporations are not available in digital format for an easy solution and alternative to registration. There is no simpler way to identify the estimated 3000 common interest communities from the 1.5 million corporations whose

Annual Franchise Tax reports are filed with the Division of Corporations. The Ombudsman proposed accepting the Annual Franchise Tax reports of common interest communities as their “registration” but requiring a little additional information, including: an email address for the community or a responsible officer, if any. The Div. of Corporations stores records only in image files. The discussion of this stalled after meeting with Division of Corporations officials.

Small Community Exemption from DUCIOA

According to the DUCIOA § 81-120, communities with 20 or fewer units, or an annual assessment less than \$653 per year (increasing at 3% per year), are exempt from the 23 sections of DUCIOA that apply to other pre-existing communities under § 81-119. Section 81-121 of the DUCIOA authorizes small communities to amend their declarations to take advantage of the DUCIOA. In 2015, the Benjamin Kunz Act amended § 81-119 to clarify that any community can adopt any of the DUCIOA. Unfortunately, small communities are the least able to afford the cost of amendment. Most declarations and bylaws require a supermajority of the Association to approve amendments to declarations. This creates an additional obstacle to the clarity provided by the DUCIOA. Proposals for consideration include:

- a. Add to the sections applicable to small communities under § 81-119:
 1. The “Lien for Assessments” under § 81-316 to allow a lien with “super priority” to smaller communities;
 2. Require non-condominium or cooperative communities to maintain, budget and audit a reserves for maintenance and repair as in §§ 81-306 (6) and 81-324.
 3. Require open board meetings under § 81-308A.
- b. Lower the dollar limit threshold of § 81-120 so more small communities have the benefit of at least the 21 sections applicable through § 81-119;
- c. Make § 81-120 an “opt out” provision rather than an exclusion.

Notice of Filing Liens for Delinquent Assessments

Homeowners and their attorneys report that often the homeowner receives no notice that the HOA placed a lien on their home. Some report that the homes of owners not in arrears on their assessments defeated foreclosure when notice was given to the homeowner shortly before Sheriff’s sale.

This can happen for innocent reasons. Two counties now accept payments of assessments as a service to communities and send two or three follow-up bills. However, the county does not always turn over the funds to the community on the community’s schedule for determining late fees. A few communities assumed a homeowner made no payments, or was delinquent, when all payments to the county were on-time. Liens may include payment of the delinquency penalties and interest. Notice to the homeowner that a lien was recorded will likely avoid the cost of recording a lien, but also mounting fees, penalties and interest.

Nothing now either prevents or requires providing notice of recording a lien against a property.

Reserves for Planned Subdivision Communities

The DUCIOA requires budgets for condominiums and cooperatives to include reserve funds for repair and replacement of common elements. § 81-324 (a). Owners in non-condominium/cooperative, planned communities with significant expensive for amenities such as swimming pools, club houses, playgrounds, roads, streetlights, and others, expressed concerned that their community is not funding (or adequately funding) a “repair and replacement reserve” account, as required by the Unit Property Act for condominiums. Concerned owners anticipate large, unaffordable, special assessments. They seek changes to the DUCIOA compelling the Association to establish and fund reserves.

Audits for Planned Subdivision Communities.

The DUCIOA requires condominiums and cooperatives to have audits by a CPA every three years, and reviews by an accountant for the other years. §81-306 (6). Owners in non-condominium/cooperative communities reported problems of improper financial accounting, and in one case theft by a treasurer. Audit requirements could extend to non-condominium/cooperative communities.

Earlier Disclosure of Governing Documents to Purchasers.

The DUCIOA requires that sellers provide copies of governing documents and other important information to purchasers no later than the date of contract to purchase a home in a common interest community in §§ 81-408 (a); 81-409 (a). Many homeowners report complete unawareness of bylaws, a requirement for a mandatory assessment enforceable by liens and suit, and limitations on free use of their property agreed to by purchasing in a common interest community. While many realtors provide these documents earlier and explain the content and significance of the documents and the restrictions they contain, others, including some developers, do not. Providing documents well before the date of contracting, or the date of settlement, gives potential purchasers a better opportunity to gauge whether they can live comfortably under the restrictions for the community or would be happier in a different community.

Transition/Turnover Requirements

The DUCIOA says little about requirements for the declarant to prepare the first homeowner elected board to take control of the Association after the period of declarant control. The DUCIOA requires election of several homeowner representatives to the board during the period of declarant control. § 81-303 (d). Homeowners in many new and pre-existing communities report the declarant simply “handed over the keys” to a representative of the Association after the period of declarant control. Boards of many communities, new and pre-existing, are unaware of essential business practices including:

- The need for filing state and federal nonprofit franchise tax forms to maintain their nonprofit status.
- Basic conflict of interest and business judgment rules.

- Collection procedures.
- Many other governance issues.

Without some introduction to operating an association governed by the DUCIOA, the Unit Properties Act, Delaware General Corporations Law, declarations and bylaws, boards, often make mistakes that invalidate their actions, or worse.

Several states and New Castle County have requirements for transition/turnover, including a checklist of documents and information the developer must provide, and a negotiated contract for transition and others. Best practices of the best declarants involve homeowner involvement on committees and an introduction to newly elected boards and those interested in running for the board seats through training and transparency to see how the Association must run. Most would agree that the best run communities had the best transition periods. Some jurisdictions, including counties in Maryland require board members to attend an educational session like the Ombudsman's Joint CAI "Board leadership Development Workshop, or certify they have taken online courses.

Collections Policy

One practitioner provided a draft of a "Collections Policy" to guide boards in a uniform procedure for collection that protects owners from selective or discriminatory practices, and the Association from claims of discrimination, while allowing the certainty of next steps in collection delinquent assessments. This proposal is under review by Advisory Council's Legislation Committee.

Court Rules Under Discussion

Several attorneys suggested that Justice of the Peace Court Institute "common interest community" days, at which a courtroom and judge are assigned to handle the collection actions for communities with several matters consolidated to begin at the same hour. This could result in judicial economy through familiarity with the requisites of collecting delinquent assessments, rulings on the authenticity, validity and requirements of books and records and authority granted by governing documents. Conversations with the Chief Magistrate and practitioners revealed the Justice of the Peace Court, at the request of a community or its attorney, will schedule all of a community's cases ready for trial on the same day with the same judge

10 Del. C. § 348

The statute allowing the Chancery Court to order expedited mandatory mediation of cases seeking enforcement of deed restrictions has been discussed. Its language limits it to homeowners associations and their owners, excluding condominiums from its benefits. Experience shows that while mediation might be expedited, discovery demanded by the parties after mediation often extend the time to resolution to rival un-expedited trials. The statute limits the Court's discretion to award attorney's fees by requiring it to order the losing party to pay the attorneys' fees of the winning party, with only limited judicial

discretion, and without balancing interests required by the “American Rule” generally requiring parties to pay their own attorneys’ fees.

Attorneys’ fees increase the stakes and harden positions making cases harder to settle. They become “winner take all.” In 2017 and 2018 the parties in several cases opted to file cases without reference to this section. The “American Rule” usually resulted in each side bearing its own attorneys’ fees and costs.

[Page intentionally left blank]

ADVISORY COUNCIL

The Act created the “Common Interest Community Advisory Council” to advise the Ombudsperson about issues relating to common interest communities. The members of the Council were appointed by government officials including:

- The Governor
- The Mayor of the City of Wilmington
- The County Executive or President of County Council in each county
- The Speaker of the House and the President Pro Tempore of the Senate
- The Secretary of State
- The Real Property Section of the Delaware State Bar Association
- The President of the Home Builders Association of Delaware
- The Chief Executive Officer of the Community Associations Institute (CAI)

The Council added *ad hoc* positions including:

- A representative of a large and a small property management firm
- A representative of the real estate sales and development industry

A list of the members of Council is available online and in the Appendix. The Council now consists of knowledgeable, interested, skilled and hard-working representatives of different aspects of common interest communities from unit owners, board members, City and County officials, the Division of Corporations, educators and developers.

The Council is nearly complete. Because of resignations, the Governor must replace a retired designee to the Advisory Council.

The Advisory Council formed committees to study the topics assigned by the Act. In 2018 Council reorganized the Committees around common functions, and created Mission Statements. A table of committees is included in the Appendices with Advisory Council information

- Collections; Legislation; and Processes Committee.
- Community Conflict Resolution/ADR Committee.
- Community Registration Committee.
- Office Operation Committee.
- Education Committee.
- Mentoring Committee.

Additional Committees

The Advisory Council formed the Mentoring Committee in 2016. A notice on the Ombudsperson’s website asks if a community wants a mentor, or if a person will mentor a community HOA. Committee members counseled two communities in 2017 and two in 2018.

Another committee formed by the Advisory Council in 2016 is Education Committee. It assisted in developing each of the educational programs presented in 2017 and 2018, and

is developing more programs of interest to common interest community members for presentation in 2019. Members of the Committee develop topics, and agendas, assist in identifying and arranging guest speakers, and participate by speaking at Workshops. In 2018 they participated in the demonstration trials of Personal Debt Lawsuits To Collect Delinquent Assessments without a lawyer, before a Justice of the Peace in each county. At one workshop the distinguished panel included the Commissioner of the State Human Relations Commission, the President-Elect of the State Bar Association, the Deputy Chief Magistrate of the county, and the lowly Ombudsman.

Advisory Council Activity

The Council met six times each in 2017-2018, with a quorum at all but one meeting. The schedule is on the Ombudsman's website and in this Annual Report, with the Advisory Council's roster. In 2019, the Advisory Council will generally meet on the on the fourth Wednesday, every other month, starting in January. Due to scheduling conflicts, the meetings in January and November will be on the *third* or *fifth* Wednesday of those months. New for 2019, the starting time will be 1:00 pm for each meeting. The Council meets in each county in rotation. Time is always reserved for comments from members of the public.

Mechanisms to Increase Collection Rate

Among the most active committees is the committee charged with studying mechanisms to increase the collection rate for common interest community assessments and Legislation. This is an issue of high importance to the residents of each county. In 2017-2018 the committee prepared "Collecting Delinquent Assessments-A Guide for Homeowners Associations, focusing on personal debt lawsuits in Justice of the Peace Court without hiring a lawyer." This Guide is now available in Ombudsperson's Website in electronic format, with live links to many forms and videos, and is available for download to personal computers. Hard copies are available on request, and at the 4 civil Justice of the Peace Courts. It was the core of an educational workshop in each county in 2018.

Mechanism to Register Communities

The Committee for Development of Mechanisms for Registration of common interest communities is focusing on the information already available from the Division of Corporations Annual Franchise Tax filings. Most common interest community associations are corporations. They are already required to file Annual Franchise Tax Forms to maintain their corporate status. These forms include not only the proper name of the association, but must list officers and directors. A discussion with the Department of State was unsuccessful in identifying a digital database to avoid the expense to taxpayers and community associations of a separate bureau to register common interest communities. Using this approach, associations would not have to file any form other than the Annual Franchise Tax form to register, nor pay an additional fee. This approach also avoids the necessity for developing the same information from each County and each of the 57 incorporated municipalities in Delaware.

The Office considers this a high priority, to announce the existence of the Ombudsperson's website, educational opportunities, the necessity of an IDR process, new legislation, and

reminders for such requirements like filing the annual franchise tax forms, state and federal, and recording bylaws, among others.

[Page intentionally left blank]

CONCLUSION

Vice Chancellor Parsons made these comments about Common Interest Communities:

A Note on Homeowners Associations

Preliminarily, I note that this litigation illustrates all too well some of the procedural and legal pitfalls that the generally volunteer leadership of homeowners associations can experience if they fail to pay attention to their governing documents. Real estate developers establish homeowners associations to control the appearance of a residential subdivision and manage its common area assets during the marketing, managing, and selling of homes in the subdivision. Initially, the developer effectively governs the maintenance organization or entity. The governing documents also provide a mechanism for the developer eventually to disengage itself from the financial and legal responsibility of the maintenance organization, typically by transferring ownership of the entity to the homeowners after selling off a predetermined number of lots.

After control of a maintenance organization is transferred to the homeowners in the form of the homeowner's association, the association's primary purpose becomes to maintain community facilities, enforce restrictive covenants, and provide services for the benefit of the residents. Many associations... are incorporated and controlled by boards made up of community homeowners. In that regard, they are subject to a well-defined body of corporate law, like the [Delaware General Corporation Law]. But, the members of the homeowners association who take governance positions on the board frequently have little to no experience with corporations or the laws that govern them and, as a result, may end up taking actions that conflict with the association's governing documents or the law. The problems of running a homeowners association often are compounded by the difficulty of finding individuals willing to serve on the board in the first place. Similar problems arise when only a relatively small percentage of the homeowners in a subdivision attend important meetings of their homeowners association, like the annual meeting.

Adams v. Calvarese Farms Maintenance Corporation, Inc., 2010 WL 3944961 (Del. Ch. Sept. 17, 2010).

The experience of the Office of the Common Interest Community Ombudsperson demonstrates the truth of V.Ch. Parson's comments. Many issues worry, concern, and anger those in the Common Interest Community, whether declarants and developers, or members of associations/owners, or the associations' boards. Many concerns and misunderstandings result from not reading or understanding the governing documents. Both the board or the homeowner, and sometimes the declarant are guilty of this.

The Act's requirement of Internal Dispute Resolution (IDR) is very beneficial. It requires a complainant and the board to read, cite and quote the provision violated. Often this appears to resolve the complaint by exposing the misunderstanding of the governing documents.

Only one set of bylaws reviewed contained a process that owners could use to address issues with Boards or Declarants leading to "notice and opportunity to be heard," and independent review. The IDR process helps fill that role. Communities are now including the Ombudsman's IDR process whether they are new or reviewing their governing documents.

There is also widespread confusion and misunderstanding about the interplay of the laws and governing documents that affect those in the Common Interest Community, and the processes available for remedying violations of the laws and governing documents.

Educational and training opportunities for boards were minimal in Delaware. But because of the Act, CAI made its first joint “Board Leadership Development Workshop” presentation in 2015. It has been offered every year since. These are the best-attended workshops of the CAI Pennsylvania/Delaware Valley Chapter, which received a 2015 award from CAI for the Joint presentation with the Ombudsman’s Office. The Advisory Council presented three Workshops it developed in 2018 on “Collecting Delinquent Assessments,” in JP court without a lawyer, besides the Joint CAI Workshop. Similarly, the Advisory Council presented several workshops and presentations in 2017 and 2018 besides the CAI Joint workshop. Council is planning one CAI Workshop, and more of its own in 2019.

As the members of the Common Interest Community pay more attention to the governing documents, problems in communities should decrease.

The ability of the Ombudsperson to issue subpoenas in appropriate cases may lead to fewer instances of theft of association funds paid by homeowners, and fairer treatment of owners and boards.

There is much work to do. The Common Interest Community Ombudsperson Act is the best resource available to address many issues.

Respectfully submitted,

Christopher J. Curtin
Deputy Attorney General
Common Interest Community Ombudsperson
820 N. French Street
Wilmington, DE 19801
Tel: 302-577-8600
Outside New Castle County: 800-220-5424
Fax: 302-577-6499
email: CIC.OmbudsmanDOJ@Delaware.gov
Web site: <http://attorneygeneral.delaware.gov/fraud/cpu/ombudsman.shtml>

APPENDICES

[Page intentionally left blank]

THE COMMON INTEREST COMMUNITY OMBUDSPERSON ACT

[Page intentionally left blank]

DELAWARE CODE TITLE 29

State Government

State Offices Created by Constitution

CHAPTER 25. STATE DEPARTMENT OF JUSTICE

Subchapter IV. Common Interest Community Ombudsperson

§ 2540 Short title.

This subchapter shall be known as the “Common Interest Community Ombudsperson Act.”

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.

§ 2541 Definitions.¹

For the purposes of this subchapter, the following definitions shall apply:

(1) “Bylaws” shall have the meaning as used in § 81-103 of Title 25.

(2) “Common interest community” shall have the meaning as used in § 81-103 of Title 25 and includes small preexisting cooperatives and planned communities as referenced in § 81-120 of Title 25.

(3) “Common interest community association” shall have the meaning ascribed to “association” or “unit owners’ association” as used in § 81-103 of Title 25 and includes associations or unit owners’ associations for small preexisting cooperatives and planned communities as referenced in § 81-120 of Title 25.

(4) “Declarant” shall have the meaning as used in § 81-103 of Title 25.

(5) “Declaration” shall have the meaning as used in § 81-103 of Title 25.

(6) “Department” means the Department of Justice.

(7) “Executive board” shall have the meaning as used in § 81-103 of Title 25.

(8) “Office” means the Office of the Common Interest Community Ombudsperson.

(9) “Ombudsperson” means the Common Interest Community Ombudsperson.

(10) “Rule” or “rules” shall have the meaning as used in § 81-103 of Title 25.

(11) “Unit” shall have the meaning as used in § 81-103 of Title 25.

(12) “Unit owners” shall have the meaning as used in § 81-103 of Title 25.

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.

¹ The definitions all refer to definitions found in the Delaware Uniform Common Interest Ownership Act, or the “DUCIOA.” Its citation is 25 *Del. C.* Chapter 81.

§ 2542 Common Interest Community Ombudsperson; creation, appointment, role, term of office, and vacancy.

(a) There is established within the Department an Office of the Common Interest Community Ombudsperson.

(b) The Attorney General shall appoint the Ombudsperson, consistent with the qualifications for the Ombudsperson set forth in § 2543 of this title.

(c) The Ombudsperson shall be the head of the Office and is charged with managing the Office consistent with the powers and duties vested in the Ombudsperson by § 2544 of this title, within the limitations of the funds appropriated by the General Assembly.

(d) The Ombudsperson shall serve at the pleasure of the Attorney General.

(e) A vacancy in the Ombudsperson position shall be filled in the same manner as the original appointment.

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.;

§ 2543 Common Interest Community Ombudsperson; qualifications.

The Ombudsperson must:

(1) Be a member in good standing of the Bar of this State.

(2) Have at least 5 years of experience in the practice of law in this State.

(3) Have experience in real estate law, including common interest community law.

(4) Have experience in conflict and alternative dispute resolution.

(5) Not engage in any other business or profession that conflicts with the powers and duties of the position or the Office.

(6) Comply with all restrictions on political activity applicable to Department employees pursuant to § 2509A of this title.²

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.;

§ 2544 Common Interest Community Ombudsperson; powers and duties.

The Ombudsperson shall have the following powers and duties:

(1) To contact declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties to inform them of the services available through the Office. In addition to any other method used to publicize the Office's services, the Ombudsperson shall maintain a website containing information about the Office, contact

² "§ 2509 Conflict of interest. No member of the Department of Justice shall act as attorney or counsel in any controversy in which the State, a county or a municipality has an interest except in the member's official capacity."

information, the services available through the Office, any information required to be placed on the website by other provisions of this chapter, and any other information deemed appropriate by the Ombudsperson.

(2) To assist declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties in understanding their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community. The Ombudsperson is not the attorney for declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties; no attorney-client relationship shall be implied or established by the Ombudsperson's communication with such persons, and the Ombudsperson may not act as or appear to act as an attorney in a legal action brought by such persons.

(3) To organize and conduct meetings to educate declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community.

(4) To prepare and publish educational and reference materials about common interest communities and to make these resources available in print and on the Office's website. The materials about common interest communities shall include general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the common interest community association, mechanisms for internal dispute resolution, or any other information deemed appropriate by the Ombudsperson.

(5) To develop and publicize procedures intended to result in fair elections for members and officers of a common interest community association.

(6) To provide monitors and vote counting services to common interest community associations, intended to result in fair elections for members and officers of a common interest community association, when 15% of the total voting interests of a common interest community association, or 6 unit owners, whichever is greater, petition the Ombudsperson to do so.

(7) To provide meetings, mediation, or other forms of alternative dispute resolution as may from time to time be requested by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties. Nothing in this paragraph shall affect the right of a declarant, common interest community association, the executive board of a common interest community association, unit owners in common interest community,

or other interested parties from proceeding pursuant to the procedure established by § 348 of Title 10.³

(8) 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. Each common interest community association shall 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 common interest community association may include the following, in addition to procedures outlined in the common interest community association's declaration, bylaws, or other governing documents:

- a. That the complaint to the common interest community association must be in writing.
- b. That a sample complaint form, if any, on which the complaint must be filed shall be provided upon request.
- c. That the common interest community association's complaint written procedure shall include the process by which the complaint shall be delivered to the common interest community association.
- d. That the common interest community association shall provide written acknowledgment of the receipt of the complaint to the complainant within 14 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 procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.
- e. That any specific documentation that must be provided with the complaint shall be described in the common interest community association's 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.
- f. That the common interest community 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 complaint. The common interest community association shall establish a reasonable timeframe for responding to and disposing of the complaint if the request for information is not received within the required timeframe.
- g. That, within a reasonable time prior to the consideration of the complaint, the complainant shall be notified of the date, time, and location that the complaint will be considered. For purposes of this paragraph, "reasonable time" shall mean

³ "§ 348 Disputes involving deed covenants or restrictions." A Chancery Court master may "mediate disputes involving the enforcement of deed covenants or restrictions" in certain circumstances. 10 *Del. C.* § 348.

such time as established by the common interest community association's complaint procedure, but shall not be less than 7 days prior to the date for consideration of the complaint. Notice of the date, time, and location for consideration of the complaint 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 procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

h. That after the final determination is made, the written notice of the final determination shall within 14 days 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 procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

i. That the notice of final determination shall be dated as of the date of issuance and include specific citations to the common interest community association's declaration, bylaws, or other governing documents, or to an applicable law or regulation that led to the final determination, as well as the registration number for the common interest community association. If applicable, the name and license number of the common interest community manager shall also be provided.

(9) To receive complaints from declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective common interest community. Prior to submitting a complaint to the Ombudsperson, complainants must complete the process established by the Ombudsperson and adopted by the executive board of a common interest community association pursuant to paragraph (8) of this section and must include a copy of the final determination with the complaint filed to the Ombudsperson.

(10) To investigate any complaint received and, if meritorious and appropriate, to provide meetings, mediation, or other forms of alternative dispute resolution to those parties involved in order to assist in the resolution of the complaint.

(11) To refer meritorious violations of existing Delaware law to the Attorney General or other appropriate law-enforcement agency for prosecution.

(12) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the exercise of the powers or the performance of the duties vested in the Ombudsperson by this section. The power contained in this paragraph may also be exercised by any other employee of the Office who is a member in good standing of the Bar of this State.

(13) To establish and publish, in print and on the Office's website, procedural rules for meetings, mediation, or other forms of alternative dispute resolution organized pursuant to this section.

(14) To establish and publish, in print and on the Office's website, procedures and forms for accepting complaints from declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective common interest community.

(15) To establish: fees for meetings, mediation, or other forms of alternative dispute resolution; election monitoring; vote counting; or other services as provided by the Ombudsperson pursuant to this section. The amount to be charged for each fee imposed under this paragraph shall approximate and reasonably reflect all costs necessary to defray the expenses related to providing these services.

(16) To make an annual report of the Office's activities to the Governor, the Attorney General, the General Assembly, and the Chief Justice of the Supreme Court on or before December 1 of each year. A copy of the report shall be provided to the Director of the Division of Research. Each such report shall contain:

- a. Statistics on the number of inquiries and complaints handled by the Office;
- b. Information on education and outreach efforts by the Office;
- c. Concerns expressed to the Office by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties;
- d. Legal developments impacting common interest communities;
- e. Recommendations for changes to Delaware law or rules of court procedure designed to improve the regulation and operation of common interest communities made by the Ombudsperson and the Common Interest Community Advisory Council;
- f. Any other information deemed appropriate by the Ombudsperson.

(17) To organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing common interest communities in this State. When such meetings are held, at least 1 meeting shall be held in each county at a convenient place within each county. When such meetings are held, the information obtained from these meetings shall be made part of the report issued pursuant to paragraph (15) of this section.

(18) To perform any other function necessary to fulfill the powers and duties outlined in this section.

(19) To direct the work of the Office consistent with the powers and duties established by this section.

(20) To employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly.

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.;

§ 2545 Required information.

(a) When a declarant, a common interest community association, the executive board of a common interest community association, a unit owner in a common interest community contacts the Office to make an inquiry, request services, or file a complaint, the declarant, a common interest community association, the executive board of a common interest community association, a unit owner in a common interest community shall provide the Office with at least the following information regarding the common interest community at issue:

(1) The name, address, telephone number, and any other contact information for the common interest community association.

(2) The name of the person engaged in property management for the common interest community association or the name of the person who manages the property at the site of the common interest community.

(3) The name, mailing address, telephone number, and any other contact information for those on the executive board of the common interest community association.

(4) The name, mailing address, telephone number, and any other contact information for the declarant.

(5) The declaration, bylaws, and any rules for the common interest community association.

(6) The annual budget adopted by the common interest community association.

(7) The number of units in the common interest community.

(8) The total annual assessment made by the common interest community association.

(b) The Ombudsperson may waive the requirement created in subsection (a) of this section when it is deemed appropriate.

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.;

§ 2546 Common Interest Community Advisory Council.

(a) There is established the Common Interest Community Advisory Council ("Council"), which shall consist of the following members:

- (1) Three members of the public who are members of the executive board of a common interest community, 1 from each county, appointed by the Governor;
 - (2) The Mayor of the City of Wilmington or a designee appointed by the Mayor;
 - (3) The County Executive of New Castle County or a designee appointed by the County Executive;
 - (4) The President of the Kent County Levy Court or a designee appointed by the President;
 - (5) The President of the Sussex County Council or a designee appointed by the President;
 - (6) Three members appointed by the Speaker of the House;
 - (7) Three members appointed by the President pro tempore of the Senate;
 - (8) The Secretary of State or a designee appointed by the Secretary of State;
 - (9) Two members from the Real Property Section of the Delaware State Bar Association whose practice involves the creation of, or the handling of disputes arising from, common interest communities, appointed by the President of the Delaware State Bar Association;
 - (10) The President of the Home Builders Association of Delaware or a designee appointed by the President;
 - (11) The Chief Executive Officer of Community Associations Institute or a designee appointed by the Chief Executive Officer.
- (b) The members of the Council shall serve until a replacement is appointed pursuant to the same process as the member's appointment.
 - (c) The members of the Council shall serve without compensation, except that they may be reimbursed for reasonable necessary expenses incident to their duties as members in accordance with State law.
 - (d) The Chairperson of the Council shall be designated by the Attorney General from among the members of the Council.
 - (e) The powers of the Council shall be exercised by a majority vote of all members present. A quorum of 9 shall be necessary to hold a meeting of the Council.
 - (f) The Council shall:
 - (1) Advise the Ombudsperson regarding issues related to common interest communities, including:
 - a. Mechanisms to increase the collection rate for common interest community assessments;

b. The development of conflict resolution procedures within common interest communities;

c. The feasibility of mandatory mediation, arbitration, or other forms of alternative dispute resolution for disputes not able to be resolved within common interest communities and, if deemed feasible, how to implement such a process;

d. The development of mechanisms for the registration of common interest communities with the State or other political subdivision;

e. Any other topic the Council deems necessary to advise the Ombudsperson on related to common interest communities.

(2) Advise the Ombudsperson in the operation of the Office.

(3) Study and recommend to the Ombudsperson the adoption, amendment, or rescission of Delaware law or rules of court procedure designed to improve the regulation and operation of common interest communities.

(4) Assist the Ombudsperson in the preparation of the annual report required of the Ombudsperson by § 2544(16) of this title.

(g) The Ombudsperson shall provide support as requested by the Council. At a minimum, the Ombudsperson shall prepare the agenda for and minutes of meetings and shall post the agenda and minutes as required by the Freedom of Information Act, Chapter 100 of this title.

(h) The Council shall meet at least 4 times each year. The Chairperson, the Ombudsperson, or a majority of the members may call a special meeting of the Council.

79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.;

[Page intentionally left blank]

PROCEDURE FOR FILING A COMPLAINT

[Page intentionally left blank]

**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 the 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. Please do not send email threads.
- 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"⁴ 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 fee⁵ 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
 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,

⁴ 29 Del. C. §2545 (a)

⁵ 29 Del. C. §2544 (15)

- 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.
- 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.

TEMPLATE FOR “INTERNAL DISPUTE RESOLUTION PROCESS” (IDR)

[Page intentionally left blank]

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

Introduction

The Common Interest Community Ombudsperson Act requires the Ombudsperson (the "Ombudsperson" or "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 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 follow a written procedure for *internally* and informally reviewing and resolving Unit Owner complaints and Association Complaints against a Unit Owner.
- An Association should comply with the requirement of a written procedure by adapting the Ombudsperson's Template, consistent with procedures in the Association's declaration, certificate of incorporation, bylaws, rules and law, and "due process" including "notice and opportunity to be heard."
- The Ombudsperson recommends that boards adapt procedures from the governing documents into a single written "Internal Dispute Resolution" (or IDR) procedure, and resolve any conflicts with the requirements of section 2544 (8), using current understandings of "due process."

If an Association has no written IDR procedure for resolving complaints from or about Unit Owners, the board should adapt the following procedure to conform to its governing documents.

- The Office will apply this Template procedure if the Association does not adopt its own.
- A unit owner may edit this Template to file a complaint with the board if the association has no IDR procedure.
- The Association can use this procedure for claims against an Owner, as limited in the procedure.

The Office recommends that each Association let Owners know about use of the IDR Complaint forms and give an "opportunity to be heard" *before* filing a lawsuit, or recording a lien on an Owner's home.

An Owner with a complaint must first use an IDR process to let the board know of a claim involving violation of a governing document or statute before the Ombudsperson can review the complaint. You must file your completed IDR Complaint form with the board. Do not send it to the Ombudsperson unless it is not resolved *internally*. Then you must attach it to the Ombudsperson's "Contact & COMPLAINT" form, as explained in the "Procedure for Filing a Complaint" on the website.

You can fill out this IDR Complaint form online, save it to your own computer, and print it. Send it to the board, not to the Ombudsperson. Save your copy or print enough for you, the board, and the Ombudsperson.

Please direct comments about this form and these procedures to the Ombudsman.

TEMPLATE FOR *INTERNAL DISPUTE RESOLUTION* (“IDR”)

[Insert Name of Common Interest Community Association]

[Insert Address and Telephone Number of Association or Managing Agent]

PROCEDURE TO FILE AN INTERNAL COMPLAINT WITH THE BOARD

1. The Unit Owner or other interested person may deliver a Common Interest Community (CIC) Complaint to the Association.⁶ The Association may deliver a CIC Complaint to a Unit Owner (“Owner”) or Other interested person. Whoever delivers a CIC Complaint is the “Complainant.” Whoever the CIC Complaint seeks a response from is the “Respondent.”

1.2. The Association shall not charge an Owner a fee to use the process, unless the Association determines the process is being abused.

2. The Complaint must be on the attached CIC Complaint Form, or one substantially similar to the CIC Complaint Form. The Association will provide a copy of the Form to the Owner upon request, or otherwise make the form generally and easily available.⁷

3. The Complainant must deliver the completed CIC Complaint, including all required supporting information to the Respondent. The respondent shall mark on the CIC complaint the date of receipt, and shall mark the date of receipt on copies of the CIC Form if requested by the complainant.⁸

3.1 For these procedures, a party makes “delivery”⁹ to the current address provided by the other party in one of the following ways:

- In person,
- hand delivery ,
- USPS “Delivery Tracking,”
- FedEx or other delivery service that creates a record of delivery,
- registered or certified mail, return receipt requested ,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 use this Internal Dispute Resolution procedure.

4. An Association must acknowledge receipt of an Owner’s CIC Complaint in writing within 14 days of receipt by any of the means described in paragraph 3.1.¹⁰

⁶ 29 Del. C. §2544 (8)

⁷ 29 Del. C. §2544 (8) (a), (b)

⁸ 29 Del. C. §2544 (8) (c)

⁹ 29 Del. C. §2544 (8) (c), (d)

¹⁰ 29 Del. C. §2544 (8) (d)

5. The complainant must deliver any specific documents required to support the CIC Complaint with, the Complaint, must describe the documents and the requested action or resolution.¹¹ The documentation may include:

- the Declaration;
- the Certificate of incorporation;
- the Bylaws;
- any Rules of the Association;
- any other governing document of the Association;
- notice letters, correspondence;
- bills;
- checks;
- photographs;
- any other document or evidence that supports the CIC Complaint, or applies to the claim, and
- if known, a reference to the law, restriction or regulation applicable to the complaint.

5.1 The Association will make and provide a copy of the governing or corporation documents to the Owner on request. Governing documents include: declarations, the certificate of incorporation, bylaws, rules, covenants or any other documents creating or governing the Association. Corporation documents include other applicable books and records of the Association.¹²

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.¹³

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. Anything the parties agree to must be put in writing and signed by the parties, including a designee of the association. The agreement binds the parties and is judicially enforceable if 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 requires additional information, the Association may within 20 days after, make a reasonable, efficient, and timely request for any additional information that is necessary for the Owner to provide in order to continue processing the CIC Complaint.¹⁴ An 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.

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.¹⁵

¹¹ 29 Del. C. §2544 (8) (e)

¹² 25 Del. C. §81-318 (a)(4), (b)

¹³ 29 Del. C. §2544 (8) (e)

¹⁴ 29 Del. C. §2544 (8) (f)

¹⁵ 29 Del. C. §2544 (8) (f)

7. The Association must deliver notice to the Owner not less than 7 days before, of the date, time, and location that the Association will consider the CIC Complaint by any means described in section 3.1¹⁶

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

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

9. No later than 14 days after the meeting considering the CIC Complaint, the Association shall make its final determination in writing. The Association shall deliver written notice of its final determination to the Owner.¹⁷

9.1 The notice of final determination shall bear the date of issuance and include:

- the written final determination explaining reasons for the decision;
- quotation of the Associations' declaration, certificate of incorporation bylaws, rules or other governing documents; or
- a reference to any applicable law, regulation or rule that led to the final determination;¹⁸
- any supporting documents, correspondence, and other materials that led to the final determination;
- the registration number for the Association,¹⁹ if any; and
- the name and license number of the community manager,²⁰ if any.

10. The notice of final determination must inform the Owner of the right to submit the Association's final determination to the Office of the Ombudsperson²¹ in substantially the following form:

"Notice:

If the board issues a final decision denying your CIC Complaint, or if the board does not respond to it after 20 days, you have the right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsperson under to 29 *Del. C.* §2544 (9), (10).

The notice to the Ombudsperson:

- must be filed within 30 days of the final adverse decision (unless waived by the Ombudsperson for good cause);
- must be in writing on the Ombudsperson's 'Contact/Complaint' form (available on the website of the Ombudsperson or by calling the number below). Fill out the "Contact/COMPLAINT" form completely;
- must include the complete IDR complaint with attachments;
- must include a copy of the board's written decision;

¹⁶ 29 *Del. C.* §2544 (8) (g)

¹⁷ 29 *Del. C.* §2544 (8) (h)

¹⁸ 29 *Del. C.* §2544 (8) (i)

¹⁹ 29 *Del. C.* §2544 (8) (i)

²⁰ 29 *Del. C.* §2544 (8) (i)

²¹ 29 *Del. C.* §2544 (9), (10)

- must include copies of any Required Information²² listed in the Contact/Complaint form and supporting documents, correspondence and other materials related to the decision; and
- must enclose the \$35 filing fee²³ (unless waived by the Ombudsperson for good cause).

You may contact the Office of the Ombudsperson through:

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

²² 29 Del. C. §2545 (a)

²³ 29 Del. C. §2544 (15)

TEMPLATE FOR INTERNAL DISPUTE RESOLUTION (IDR) COMPLAINT FORM

(An editable version is available online)

Ombudsman's COMMON INTEREST COMMUNITY (CIC) INTERNAL COMPLAINT FORM

Insert Name of Common Interest Community Association

Insert Address and Telephone Number of Association or Managing Agent

The Board of Directors (Board) of the **Community Association Name** (the "Board") adopted this complaint form for filing a written CIC Complaint *internally* with the Board about violations of the community's governing documents including:

- The Plat or Plot plan,
- The Declaration,
- The Certificate of Incorporation,
- The Bylaws,
- The Rules or policy of the community, or
- The applicable law (if known) such as:
 - The Delaware Uniform Common Interest Ownership Act (DUCIOA), 25 Del. C. ch. 8;
 - The Unit Properties Act (UPA for Condominiums), 25 Del. C. ch. 22
 - The Delaware General Corporation Law (DGCL) 8 Del. C. ch. 1
 - The Office of the Common Interest Community Ombudsperson Act, 29 Del. C. ch. 2544

This form may be used for other complaints as well.

Instructions: You can fill-in this form online at the Ombudsman's website. If you have more than one complaint to explain, please answer these questions for each complaint or document violated and include them all as one complaint to the board.

For each complaint, please answer these questions:

1. Describe your claim in a few words. (Examples: Denial of access to records; Violation of bylaws on elections...)

Please Enter Text Here

2. What document (the Declaration, Certificate of Incorporation, Bylaws or Rule) and paragraph number did anyone violate? Please select all that apply. If other please specify.

- Plat Plan
- Declaration
- Certificate of Incorporation
- Bylaws
- Rules
- Amendment to any Document

- DUCIOA**
- Unit Property Act**
- General Corporation Law**
- Other**

Please Enter Text Here

- 3. Please quote the part of each section violated.**

Please Enter Text Here

- 4. Explain in what way anyone violated the section, in the order things happened, starting at the beginning.**

Please Enter Text Here

- 5. Describe, explain and attach any documents or other evidence that supports your claim. (Examples: Meeting minutes, Notices, letters, emails, policy statements, photos...)**

6.

Please Enter Text Here

- 7. Please state what you want to the Board to do because of your complaint.**

Please Enter Text Here

- 8. Anything else important to know about your complaint?**

Please Enter Text Here

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: **Please Enter Text Here**

Date: **Please Click Here to Enter a Date**

Signature: _____

Your Mailing Address: **Please Enter Text Here**

Lot/Unit Address: **Please Enter Text Here**

Your Contact Preference: **Please Choose an Item**

Your Telephone or cell #: **Please Enter Text Here**

Your Email Address: **Please Enter Text Here**

Other: **Please Enter Text Here**

NOTICE:

If the Board issues a final decision denying your CIC Complaint, or if the board does not respond to it after 20 days, you have the right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsperson under 29 *Del. C.* §2544 (9), (10).

The Notice to the Ombudsperson:

- Must be filed within 30 days of the Final Adverse Decision (unless waived by the Ombudsperson for good cause);
- Must be in writing on the Ombudsperson’s “Contact/Complaint” form (available on the website of the Ombudsperson or by calling the number below). Fill out the “Contact/COMPLAINT” form completely;
- Must include your complete CIC *Internal* Complaint with attachments;
- Must include a copy of the Board’s written decision, if any;
- Must include copies of any “Required Information”^[1] listed in the Contact/Complaint form and supporting documents, correspondence and other materials related to the decision; and
- Must enclose the \$35 filing fee^[2] (unless waived by the Ombudsperson for good cause).

You may contact the Office of the Ombudsperson through:
 Delaware Department of Justice
 Office of the Common Interest Community Ombudsperson
 820 N. French Street
 Wilmington, DE 19801
 Tel: (302) 577-8600
 email: CIC.OmbudsmanDOJ@state.de.us

I caused this CIC Complaint and all attached documents to be delivered to the Association / Respondent at the address provided by the Respondent on Please Click Here to Enter a Date at Please Choose a Time by the following method of delivery: Please Choose and Item If Selected Options 7 or 8. Please Specify Here

I made and kept a record of how I delivered the complaint to the board.

Your Name: **Please Enter Text Here**

Signature: _____

Date: Please Click Here to Enter a Date

^[1] 29 Del. C. §2545 (a)

^[2] 29 Del. C. §2544 (15)

CIC “CONTACT & COMPLAINT” FORM

[Page intentionally left blank]



RETURN THIS FORM TO:

(Devuelva Este Formulario a):

OFFICE OF COMMON INTEREST COMMUNITY OMBUDSMAN

DEPARTMENT OF JUSTICE

STATE OF DELAWARE

820 N. FRENCH STREET, 5TH FLOOR

WILMINGTON, DE 19801

Phone: (302) 577-8600 or 1-800-220-5424

(Teléfono)

Fax: (302) 577-6499

Email: CIC.OmbudsmanDOJ@state.de.us

(Correo electrónico)

FOR OFFICIAL USE:

(Para Uso Oficial)

CIC#: _____

(Caso No)

Investigator:

(Investigador)

COMMON INTEREST COMMUNITY – CONTACT and COMPLAINTFORM*

(Declaración de Querrela)

Your Name:

(Su Nombre):

Name of Person or Business Complaint is Against:

(Nombre de Persona o Empresa):

Your Home Address:

(Su Dirección):

Location:

(Ubicación):

Number and Street (Número y Calle)

Number and Street (Número y Calle)

Development (Urbanización)

City (Ciudad)

City (Ciudad)

State and Zip Code (Estado Y Código Postal)

State and Zip Code (Estado y Código Postal)

Phone Number (s) (Teléfono):

Phone Numbers (Teléfonos):

Email Address (Correo Electrónico):

Home (Hogar):

Work (Trabajo):

Electrónico):

Email Address (Correo

DO NOT FILE A COMPLAINT UNLESS YOU HAVE COMPLETED THE INTERNAL DISPUTE RESOLUTION PROCESS (IDR)

INSTRUCTIONS

PLEASE READ THROUGH THIS FORM CAREFULLY, BEFORE STARTING

Definition: The term "Community" and "common interest community" mean the same thing in this

Form. The Community includes you if you are:

- An owner of a Unit of real estate, and
 - your Unit is in a planned community, planned development, condominium, cooperative, or maintenance corporation;
 - your Community is subject to a plan described in the governing documents of your Community, (such as a Declaration, deed restrictions, Bylaws or rules) and
 - because of your ownership, you are obligated to pay a share of taxes, insurance and other costs; and
 - the costs are for funding, managing and supervising common areas that are available to all members of the Community, such as parks, pools, playgrounds, club houses, open spaces, private streets, etc.

The Community also includes:

- The Developer, also known as the "Declarant"; and
- Your neighborhood's governing Association, no matter what it is called, for example:
 - Planned community association or council;
 - Homeowners association or council;
 - Condominium association or council;
 - Cooperative association or council;
 - Community maintenance corporation, association or council; or
 - Other similar organization, no matter how it is named.
- Any other interested party.

1. You may Contact the Office of the Ombudsperson to make an INQUIRY;

a REQUEST FOR SERVICE; or submit a COMPLAINT if you are:

- a Unit Owner in your Community, or
- a Declarant; or
- a Community Association member; or
- an executive board of a Community Association; or
- any other interested party;

and your complaint concerns potential violations of the law, Bylaws, Rules, regulations, or documents governing your Community.

2. DO NOT FILE A COMPLAINT BEFORE YOU COMPLETE THE INTERNAL DISPUTE RESOLUTION PROCESS of your Community's Association or one established by the Ombudsperson. This is required by the Ombudspersons Act. You must include a copy of the final determination of the Association with the Complaint that you wish to file with the Ombudsperson, AND a \$35 Filing Fee Payable to "DOJ-CICombudsman".

3. You must also attach to your INQUIRY, REQUEST FOR SERVICES, or COMPLAINT:

- a. the Declaration or deed restrictions creating your Community,

- b. the Bylaws of your Community, and
 - c. the Rules of your Community and
 - d. any other document or evidence supporting your Inquiry, Request For Service, or Complaint.
4. The Ombudsperson is **not** the attorney for: You, Unit Owners, Declarants, Community Associations, the executive board of a Community Association, or any other interested parties.
- **No attorney-client relationship is implied or created by the Ombudsperson's contact with you or any person, and the Ombudsperson may not act as your attorney in a legal action brought by you or any other person.**
 - **The Office of the Attorney General and the Office of the Ombudsman cannot provide legal advice, or legal interpretation. We can only provide general, nonbinding explanations of laws and regulations governing common interest communities.**
 - **The goal of the Office, and its statutory responsibility is to:**
 - **educate the public;**
 - **direct you to available Community resources;**
 - **review final adverse decisions from your Association; and**
 - **help unit owners and associations avoid lawsuits and resolve problems**
informally, through meetings, mediation
or arbitration.

The Office and the Ombudsperson cannot, however, replace the services of an attorney representing a unit owner's or Association's particular interest.

5. **Please attach COPIES, not originals, of all papers that relate to your Inquiry, or Complaint, including REQUIRED INFORMATION as well as papers such as Notices, advertisements, photographs, contracts, receipts, bills, cancelled checks, written agreements, letters or emails.** (Envíe copias, no originales, de todos los documentos en relación con esta querrela, inclusive contratos, fracturas, recibos, cheques cancelados, cartas o correo electrónico).

REQUIRED INFORMATION

The Common Interest Community Ombudsperson Law (29 Del C. §2945) requires that you provide the following information:

1. Are you a person or one of the following types of organizations? Check all that apply:
- A Unit Owner (a homeowner) in a Community?
 - A person, or family member who owns a residence in a planned Community?
 - A "Declarant" (or developer) who still owns a Unit that is created by the Declaration or deed restrictions (the Governing documents)?
 - A person leasing a unit; **and** all of the following are **true**:
 - your lease will expire when your landlord's lease expires; **and**
 - your lease is longer than 20 years, **and**
 - your lease is not for a membership campground?
 - A Declarant?
 - A Community Association?
 - The executive board of a Community Association?
 - A member or representative of the executive board of a Community association?
 - A person otherwise interested? If so, please describe your interest:

2. **Reason You Are You Contacting the Office of the Ombudsperson:**

- To make an **INQUIRY**? If so, please state your inquiry and its surrounding circumstances in the "Narrative" section of this form. Please keep in mind that the Office of the Attorney General and the Office of the Ombudsman cannot provide legal advice, but can only provide general nonbinding explanations of laws and regulations and documents, governing common interest communities. There is a fee of \$35 to file an Inquiry.
- To **REQUEST SERVICES**? The following services are authorized by the Law:
 - Provide election monitors and vote counting for fair Community Association elections? (Requires 15% of the voting interests, or 6 Unit Owners, whichever is greater, and a fee.)
 - Provide assistance in understanding the rights, responsibilities and processes available to you through general, nonbinding explanations of laws, regulations, and governing documents governing common interest communities, in general terms, that does not require review of your governing documents.
 - Conduct a meeting to educate Community members about their rights and responsibilities, and the processes available under law, regulations, and rules.

Provide meetings, mediation, arbitration, or other forms of alternative dispute resolution as requested for disputes other than Complaints. There is a filing fee of \$35, and fees for the mediator's time and expenses.

Describe any other service you seek. We will review your request and determine whether it is within the authority of the Office of the Ombudsperson or other unit or agency.

To file a **COMPLAINT** that has been through your Community Association's or the Ombudsperson's Internal Dispute Resolution Process? Attach a copy of the Association's Final Decision, or statement that the request was ignored. Are you seeking:

- Meeting or Conciliation?
 - Mediation?
 - Arbitration that is binding?
 - Arbitration that is non-binding? Other?
- Please describe:

ATTACH A CHECK FOR THE FILING FEE OF \$35.00 PAYABLE TO "DOJ-CIC OMBUDSMAN"

3. Please provide the following information required by the

Ombudsperson's Law: (1) Contact information for the Community

Association:

Name of Association: _____

Contact person: _____

Address: _____

Telephone: _____

Mobile: _____

Fax: _____

Email: _____

Any Other Contact information: _____

(2) Contact information for the property manager or the name of the person who manages the property of the Community.

Name:

Contact person: _____

Address:

Telephone: _____ Mobile:

Fax: _____ Email:

Any Other Contact information:

(3) Contact information for the executive board of the Association.

Name: _____

Contact person: _____

Address: _____

Telephone: _____

Mobile: _____

Fax: _____

Email: _____

Any Other Contact information: _____

(4) Contact information for the Declarant or developer.

Name: _____

Contact person: _____

Address: _____

Telephone: _____

Mobile: _____

Fax: _____

Email: _____

Any Other Contact information: _____

(5) Please attach all of the following Required Information to this Form. (These documents should be available to you from the Community Association, upon request):

- The final decision of the Community Association on your complaint; The Declaration;
- The Bylaws;
- The Rules for the Community;
- The annual budget adopted by the Community Association.
- Any other documentation or evidence that supports Your Inquiry, Request or Complaint, including if appropriate: meeting notices, minutes of Association or executive board meetings, correspondence, bills receipts, photographs, advertisements for the community, as examples.

(6) State when your community was created or approved.

Month _____ Day _____ Year _____

(7) State the number of Units in your Community.

(8) State the amount of the annual assessment made by your Community Association.

SPECIFIC DETAILS IF PERTINENT TO YOUR COMPLAINT OR CONTACT:

(9) What date did you purchase your Unit? _____

Please attach a copy of your purchase contract and all related papers.

(10) Who was your Sales Agent? Name, Firm, Address, Telephone, Email:

(11) Did you obtain advertising information about the Community, or its features? What did you receive:

Please attach a copy of any advertising of the Community, and its features that you relied upon, and any current advertisement of the Community. Please describe information you were told if there is no document:

(12) Were you represented by an attorney at Settlement? Name:

ADDITIONAL INFORMATION

Have you complained to the Unit Owner or Community Association? YES NO
(If yes, to whom?)

What was the response?

Have you made a complaint with any other governmental or regulatory agencies?
 YES NO

If yes, who? _____ Which agency? _____

At what address? _____

Please provide the names, telephone numbers, and addresses of persons needed as witnesses.

Please provide the names, telephone numbers, and addresses of other known persons affected.

Does an attorney represent you in this matter? YES
NO If yes, provide attorney's name and address:

Have you or anyone else filed a lawsuit against anyone regarding this complaint?
 YES NO

If yes, provide name of court and names of the parties:

Case number: _____ Date case filed: _____
Attach copies of the court documents to this complaint.

READ THE FOLLOWING CAREFULLY BEFORE SIGNING BELOW:(Favor de leer lo siguiente cuidadosamente antes de firmar):

- **I have attached copies of all papers that relate to this complaint.**
(He fijado copias de todo documento relacionado con esta querrella).
- **I understand that in order to successfully handle this complaint the Office of the Ombudsperson may need to send this complaint to the person, organization or firm that I have complained about.** (Yo entiendo que para investigar esta querrella, la Unida de Protección al Inveſtor tiene que enviar esta querrella a la persona o empresa por cual yo he formulado cargos).

**YOU MUST CHECK ONE OF THE FOLLOWING:
(FAVOR DE INDICAR UNA DE LAS SIGUIENTES):**

____ You have my permission to send this complaint to the person, organization or business named in my complaint. (Autorizo que envíen esta querrella a la persona o empresa por cual yo he formulado cargos).

____ You **DO NOT** have my permission to send this complaint to the person or business named in my complaint. (**No autorizo** que envíen esta querrella a la persona o empresa por la cual yo he formulado cargos). **WITHOUT YOUR PERMISSION TO SHARE YOUR COMPLAINT WE MAY NOT INVESTIGATE OR RESOLVE YOUR COMPLAINT, AND WILL NOT PROCESS IT FURTHER. WE WILL HOLD IT FOR INFORMATION OR REFERRAL ONLY.**

The information contained in this complaint is true to the best of my knowledge.
(La información incluida en esta querrella es correcta según mi mejor conocimiento).

FOR COMPLAINTS

[] I have attached a completed copy of the Internal Dispute Resolution complaint, and the complete response to it.

[] I have enclosed a check in the amount of \$35.00 payable to: "DOJ-CICOmbudsman" for the filing fee.

Signature
(Firma)

Date
(Fecha)

Please be advised that Attorney General's Office including the Office of the Ombudsperson is prohibited by law from giving you legal advice, legal opinions, or acting as your private attorney. Therefore, you may wish to consult with a private attorney to discuss your legal rights and remedies.

ADR PROCEDURES AND FORM AGREEMENTS

[Page intentionally left blank]

ALTERNATIVE DISPUTE RESOLUTION PROCESSES AND PROCEDURES

INTRODUCTION

A central duty of the Office of the Common Interest Community Ombudsperson is providing “alternative dispute resolution,” or “ADR.” The “alternative” to ADR is a lawsuit in court. The Ombudsperson Act gives the Ombudsperson the “power and duty” “To provide meetings, mediation or other forms of alternative dispute resolution as may from time to time be requested by” members of the common interest community. In addition, following a review of a complaint that completed an association’s “Internal Dispute Resolution” process, the Ombudsperson may offer ADR in an appropriate case. In either case, the Office of the Ombudsperson cannot force parties into ADR. All ADR through the office of the Ombudsperson is voluntary.

The Office of the Ombudsperson can either facilitate or conduct ADR. The Ombudsperson can facilitate ADR by accepting the complaint and forwarding it to the opposing party, and help the parties agree on neutral ADR practitioner if either party objects to the Ombudsperson.

To request ADR through the Office of the Ombudsperson, please complete and submit the Ombudsperson’s Contact/Complaint Form with a \$35 check payable to the Delaware Department of Justice, Office of the CIC Ombudsperson. Additional fees apply whether the Office of the Ombudsperson or another ADR practitioner provides ADR services.

ADVANTAGES OF ADR

Lawsuits are expensive, take a long time, will probably involve the additional expense of attorney’s fees, and put the decision concerning how to resolve a dispute in the hands of an uninvolved third-party, like a judge or jury. Although ADR is available in some courts, it is usually not available until a party files a complaint. By that time attorneys are usually involved, since in courts (other than Justices of the Peace Courts²⁴) an attorney must represent a corporation such as a homeowners association. Bylaws of most home owners associations require a complaining homeowner to pay the association’s attorneys fees. Even if the homeowner wins, the association’s attorney’s fees are a cost the association must pay from the assessments that all homeowners in the community must pay, unless the association’s insurance covers the fees as a cost of defense.

The Ombudsperson Act, does not affect the right to sue under §348 of Title 10. That statute authorizes Chancery Court to order a Master in Chancery to mediate a complaint seeking enforcement of deed restrictions. Although the parties may mediate without attorneys, the association board must have an attorney since it is likely a corporation. This increases the expense compared to informal ADR. The statute allows the Court to order the losing party to pay the attorneys fees of the party that wins, unless that would be unfair, unreasonable or harsh. This raises the stakes in lawsuits over deed restrictions. A copy of this law is available on the Ombudsperson’s website.

Major advantages of alternative dispute resolution include:

²⁴ Justice of the Peace Court Civil Rule 91 permits an officer of a corporation to represent the corporation in Justice of the Peace Court if the officer first files a “Certificate of Representation” with the Chief Magistrate, complies with the other provisions of Supreme Court Rule 57, and pays an annual registration fee of \$20. The form and further information is available at <http://courts.delaware.gov/forms/download.aspx?ID=5348>

- The parties can work out their own solution to issues in some forms of ADR such as conciliation, meet and confer, or mediation;
- ADR can be conducted informally, without resort to courts or even attorneys;
- ADR can be far faster and less expensive than traditional court procedures;
- ADR can take several forms: conciliation, mediation, nonbinding arbitration, binding arbitration or neutral assessment;
- All ADR is voluntary. Both sides of the dispute must agree to participate in ADR.
- The information discussed during any ADR process remains confidential, by agreement or by law, even if there is litigation after unsuccessful ADR.
- A trained ADR practitioner conducts sessions: a conciliator, or a mediator or an arbitrator, who attempts to fairly resolve the dispute and satisfy the needs of the participants.
- All participants have an opportunity to express their feelings about the case and the facts as they see them.
- ADR offers the parties a safe place for reviewing options and enables them to develop their own settlement terms in a mutually agreed format.
- The parties can agree on an ADR Practitioner, or they can seek help with the selection.

WHAT FORMS OF ADR ARE AVAILABLE THROUGH THE OMBUDSPERSON?

The Ombudsperson or a designee can provide the following types of ADR. These are discussed below in order of increasing complexity.

CONCILIATION

“Conciliation” is a process in which an experienced, neutral person or “conciliator” meets with the parties to a dispute, often separately, to informally discuss and negotiate a complaint informally. The conciliator may make suggestions as the parties consider how to resolve a dispute, as well as their own. An association board, by rule or bylaw, should make this process available to resolve disputes internally. The Office of the Ombudsperson can either coordinate or provide conciliation upon request. To request conciliation through the Office of the Ombudsperson, please complete the Ombudsperson’s Contact Complaint Form and the Agreement for Conciliation or Mediation form available on this website.

- The conciliator cannot impose a decision or any penalty on the parties.

- Conciliation is the simplest, fastest, and least expensive form of dispute resolution.
- The parties find their own resolution to a dispute, with or without the assistance of the conciliator.

“Meet and Confer” is another type of conciliation, without the guidance of a neutral person. With or without a neutral conciliator, conciliation follows this process:

- Any party to a dispute involving a homeowner, the homeowners association, the declarant, or other interested party, may request conciliation:

(1) A party may request the other party to meet and confer, with or without a neutral conciliator, to resolve the dispute. The request must be in writing. An Agreement for Conciliation or Mediation is available on this website.

(2) A homeowner may refuse a request to meet and confer. The association may not refuse a homeowner’s request to meet and confer.

(3) The homeowner’s association board must promptly designate a director to meet and confer.

(4) The parties must meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith to resolve the dispute.

(5) The parties must put any agreement resolving the dispute in writing and sign it. The board’s authorized designee must sign the agreement on behalf of the association.

- An agreement made through conciliation binds the parties and is judicially enforceable as a contract if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

- An Association may not charge a homeowner a fee to participate .

MEDIATION

“Mediation” is the most common method used for resolving disputes. Mediation offers the parties a safe forum for reviewing options and enables the parties to develop their own settlement terms by an agreement. Mediation is a process in which a neutral person called a “mediator” aids the parties in agreeing on how to resolve a dispute. To request mediation through the Office of the Ombudsperson, please complete the Ombudsperson’s Contact/Complaint Form and the Agreement for Conciliation or Mediation form available on this website.

- The mediator cannot impose a decision or any penalty on the parties.
- The mediator’s role is to clarify misunderstandings and ambiguities; to provide a new perspective on disputed issues; and to explore options for agreement.
- Mediation through the Office of the Ombudsperson is voluntary. The parties must agree to mediation and must be present for the mediation conference.
- Mediation is beneficial to both parties because of the time and money saved compared to a lawsuit or trial.

Before the mediation begins, the parties and the mediator sign a written agreement to mediate. A form agreement to mediate is available on this website. The agreement to mediate states that the mediation conference and everything said at the mediation conference is confidential, even if the mediation does not resolve the dispute. It states that neither party can call the mediator as a witness if the case goes to arbitration or trial.

Mediation conferences are informal proceedings. That means that the strict legal rules of evidence do not apply in mediation. This allows for an unrestricted discussion of issues and misunderstandings. If the parties settle, the mediator puts the settlement agreement in writing and all the parties and the mediator sign it. The agreement describes both the settlement of issues and the future responsibilities of each party. Once signed the agreement is a binding contract, which is enforceable by courts.

If the dispute is not resolved at the mediation conference, the mediator will continue to work with the parties to reach an agreement. Mediation includes all contacts between the mediator and any party, until the parties reach an agreement, or the parties discharge the mediator, or the mediator determines that the parties cannot agree. The context can include telephone conversations, meetings and even additional mediation conferences.

The mediator may terminate the conference if the parties cannot agree. The termination will not bind either party to anything in any other proceeding. If the parties cannot agree after initial mediation sessions, other ADR procedures or more formal processes are available. These include arbitration or filing suit and proceeding with litigation.

The process of mediation often involves:

- The complaining party fills out a Contact/Complaint form requesting mediation and files it with the Ombudsperson, and delivers a copy to the responding party with a copy of an Agreement to Mediate.

- The responding party may supply answering information, provide it to the Ombudsperson, and delivers a copy to the responding party.
- The parties must agree to mediation by signing a written agreement form.
- The agreement to mediate may identify any mediator the parties agree upon, or the Ombudsperson, who may conduct the mediation or designate a mediator.
- If the parties do not agree to a mediator, the Ombudsperson will appoint one.
- The mediator will specify a date and time for the mediation that is convenient to both parties.
- Five days before the mediation date, both the complaining party and responding party will submit records the mediator must understand to assist the parties to agree. The parties need not provide their information to the opposing party, but some mediators sometimes recommend that the parties give it to each other. Since the mediator will not decide the case, the parties need not provide everything they would produce at a trial, or duplicate documentation provided with the Contact/Complaint form.
- The "Required Information" is the complaint form, with an explanation and identification of the parts of the governing documents of the homeowners association, from the certificate of incorporation, declarations, the bylaws, and any rules adopted by the homeowners association. In addition, each party can provide a few items of evidence or documents that would be useful for the mediator to consider, in assisting the parties to agree. Sometimes the mediator will ask each side to fill out a form that helps the parties think through the strengths and weaknesses of their position, and the agreements they seek.
- The parties may agree on what documentation the mediator will see and provide it together, or may share the information they are providing with the other party. This is not required.
- On the day and time of the mediation the parties will meet with the mediator in a conference room.
- The mediator will explain the mediation process and require each party to sign an agreement to mediate the dispute and agree that neither side will call the mediator as a witness in any other proceeding concerning the dispute.
- The mediator will invite the complaining party to describe the dispute or complaint and explain what the party wants to resolve the dispute.
- The mediator will then invite the responding party to state a response to the complaining party and tell the mediator what he wants to resolve the dispute.
- The mediator may then separate the parties, so that each is in a separate room in order to speak privately with each.
- The mediator will make a judgment about what party to speak with first.

- The mediator may ask questions of the each party, and will ask what they want the mediator to convey to the opposing party as a settlement proposal.
- The mediator will not tell the other side anything that you tell him not to disclose.
- The mediator will take messages back and forth between the rooms separating the parties and discuss the settlement proposal and the response to it. The mediator will attempt to identify areas of agreement and areas of dispute and possible ways for reaching agreement.
- The mediator will continue this process as long as it appears there is room to settle.
- If the parties reach an impasse the mediator will end the mediation conference for the day. The mediator will likely contact the parties later to offer to convey additional proposals in an effort to obtain agreement that will resolve the dispute.
- When the parties agree, the mediator will assist by reducing the agreement to writing. The mediator may follow up with each party to see that each side is honoring the agreement, if that is necessary.

ARBITRATION

“Arbitration” is a voluntary, confidential process in which a neutral “arbitrator” hears both sides of a controversy and decides all aspects of the case based on the facts and the law just like a judge without a jury. If the parties agree in writing, the decision will be binding, and enforceable. To request arbitration by or through the Office of the Ombudsperson, please complete and submit the Ombudsperson’s Contact/Complaint Form and the Agreement to Arbitrate form available on this website.

- Arbitration is often beneficial to both parties because of the time and money saved compared to a lawsuit or trial.
- The arbitrator will decide for the parties. This differs from mediation where the parties negotiate their own result. As in cases decided in courts, arbitration often means that at least one party is unhappy with the decision.
- The arbitrator’s role is to hear the evidence, including testimony, and review the documents and exhibits. The Arbitrator decides: what facts are the important; what law applies to the facts; and applies the law to the facts to reach a decision. The parties do not negotiate their own resolution, but if they agree on certain facts or principles, the arbitrator will consider those.
- The parties can agree in writing that the decision will bind them. If the decision is binding the parties are bound to follow the arbitrator’s decision. The Court of Chancery can enforce a binding arbitration order.
- Arbitration through the office of the Ombudsperson is voluntary. The parties must agree to arbitration, and if they do, they must be present for the arbitration hearing. However, sometimes an agreement made before there is a dispute requires the parties to arbitrate

instead of suing. The bylaws of some communities require arbitration before a person can sue.

- Delaware's Uniform Arbitration Act governs arbitration. The Ombudsman's Arbitration process incorporates this law to answer questions that arise in the arbitration process. This law makes agreements to arbitrate enforceable in Chancery Court. This law is Chapter 57 of Title 10 of the *Delaware Code*. An indexed, word searchable copy of the law is available on this website on the "Important Statutes" page.

The process of arbitration often involves:

- The complaining party file fills out a Contact/Complaint form requesting arbitration and files it with the Ombudsperson, and delivers a copy to the responding party with a copy of an Agreement to arbitrate.
- The parties must agree to arbitration by signing a written agreement form.
- The parties may agree whether the arbitration will be binding or nonbinding. The written agreement to arbitrate should state whether arbitration is binding or nonbinding. Binding arbitration ends the dispute. Nonbinding arbitration may not.
- The agreement to arbitrate may identify an arbitrator satisfactory to the parties.
- If the parties do not agree to an arbitrator, the Ombudsperson can conduct the arbitration or designate who one will conduct the arbitration.
- The arbitrator will specify a date and time for the arbitration that is convenient for both parties.
- 10 days before the arbitration date the complaining party will submit all records needed for decision of the case to the arbitrator and the responding party.
- The "Required Information" is the complaint form, the governing documents of the homeowners association including the certificate of incorporation, declarations, the bylaws, and any rules adopted by the homeowners association. In addition, the complaining party must provide any other necessary evidence or documentation, including photographs, bills, or other evidence supporting the claim.
- Five days before the arbitration date the responding party must deliver all records needed for decision of the case to the arbitrator and the complaining party. However, the responding party need not provide anything already supplied by the complaining party.
- The parties may agree on what documents and exhibits the arbitrator will see and provide them together. They can also provide additional exhibits, so long as they provide copies to the other party in the time allowed.
- On the day and time of the arbitration the parties will meet with the arbitrator in a conference room or hearing room.

- The arbitrator will invite the complaining party to explain the complaint and the evidence, and explain why the arbitrator should decide for the complaining party.
- The arbitrator will then invite the responding party to state the response and explain why the arbitrator should decide for the responding party.
- The arbitrator will then ask the parties to present their witnesses and their evidence.
- The arbitrator will first ask the complaining party to present evidence, or witnesses, or testify under oath to show and explain the evidence in support of the complaint.
- The arbitrator may invite the responding party to ask questions of the complaining party.
- The arbitrator may ask questions of the complaining party.
- When the complaining party has presented all the testimony, documents and evidence supporting the complaint, and answered all questions of the responding party or the arbitrator, the arbitrator will give the responding party an equal opportunity to present testimony, documents and evidence to support its response.
- The complaining party may ask questions directed to the responding party, and so may the arbitrator.
- If the responding party raises matters that the complaining party wants to address, the arbitrator will give the complaining party an opportunity to present additional witness testimony or documentary evidence if available.
- When both parties have provided all the testimony, documents and other evidence they want the arbitrator to consider, the arbitrator will give each side an opportunity to explain what the evidence shows, the governing documents and law requires, and why the arbitrator should decide in their favor. The complaining party has the first opportunity to make a closing explanation, and may reply to the responding party's closing explanation.
- The arbitrator may decide on the spot or may decide within five days and deliver a written decision to the parties within that time. The parties may agree whether they want the arbitrator to explain the decision.

NEUTRAL ASSESSMENT

“Neutral case assessment” is a less common process by which an experienced “neutral assessor” gives a non-binding, reasoned, oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation and/or arbitration techniques to aid the parties in settling.

The process of neutral case assessment often involves:

- The procedure is the same as mediation, except:

- After hearing from the parties, the neutral assessor will provide a nonbinding, oral or written evaluation on the merits of each party's position.
- This may lead to meetings, mediation, arbitration, or direct negotiations leading to resolution of the dispute you.
- Sometimes the neutral case assessment turns into a mediation that eventually leads to settlement.

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON

**Delaware Department of Justice
820 N. French St., 5th floor
Wilmington, DE 19801**

AGREEMENT FOR CONCILIATION

This is an agreement by the parties to participate in this conciliation process. I understand that conciliation is a voluntary and confidential process, which we may terminate at any time.

By signing this agreement, I indicate I am aware that information shared in the conciliation sessions and all materials prepared for conciliation are confidential. I will not try to force the conciliator to produce documents or to give evidence relating to any conciliation session in any court or administrative proceeding.

I understand the conciliator will not disclose confidential information provided during the course of the conciliation or testify voluntarily on behalf of any party. I understand the conciliator may find it helpful to meet with each party separately, but the conciliator will not reveal what is said by either of us, without permission.

I further agree that:

1. No one may attend conciliation without permission of all parties and the consent of the conciliator.
2. The conciliator will not serve as the representative or lawyer for any party. I was encouraged to consult with a lawyer prior to signing any agreement.
3. Any party including the conciliator may withdraw from or terminate the conciliation at any time.
4. The conciliator cannot and will not impose an agreement or penalty. Only the parties can reach a resolution and I agree to abide by the terms and conditions of an agreement.
5. If we resolve the dispute, the parties or conciliator will put the agreement in writing and when signed, it shall reflect the wishes of each party in resolving the dispute. We intend it to be a contract between the parties instead of submitting the dispute to the court process. If a party violates the agreement, I understand either party may seek a remedy through the courts.
5. The conciliator will report to the Office of the Ombudsperson that conciliation occurred and whether it was successful.
6. If I represent a homeowners association, or other corporation, I am authorized by the board to participate and make agreements.

Party

Party

Party

Party

Conciliator

Conciliator

Date:

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON

**Delaware Department of Justice
820 N. French St., 5th floor
Wilmington, DE 19801**

AGREEMENT TO MEDIATE

_____ **Filing Party (Print or type name)**

_____ **Responding Party (Print or type name)**

Matter #:

This is an agreement by the parties to participate in this mediation process. I understand that mediation is a voluntary and confidential process, which we may terminate at any time.

By signing this agreement, I indicate I am aware that information shared in the mediation sessions and all materials prepared for mediation are confidential. I will not try to force the mediator to produce documents or to give evidence relating to any mediation session in any court or administrative proceeding. I understand the mediator will not disclose confidential information provided during the course of the mediation or testify voluntarily on behalf of any party. I understand the mediator may find it helpful to meet with each party separately, but the mediator will not reveal what is said by either of us, without permission.

_____ Initial here if you request the Ombudsman to refer mediation to the Court of Common Pleas Community Mediation Program.

The Mediator will contact the parties to set a date, time and place for the mediation session and exchange of documents.

The parties further agree to the following:

1. No one may attend mediation without permission of all parties and the consent of the Mediator.
2. The Mediator will not serve as the representative or lawyer for any party. I was encouraged to consult with a lawyer prior to signing any agreement.
3. Any party including the Mediator may withdraw from or terminate the mediation at any time.
4. The Mediator cannot and will not impose an agreement or penalty. Only the parties can reach a resolution, and I agree to abide by the terms conditions of the agreement.

5. If we settle the dispute, the Mediator will put the agreement in writing and when signed, it shall reflect the wishes of each party in resolving the dispute. We intend it to be a contract between the parties instead of submitting the dispute to the court process. If a party violates the agreement, I understand either party may seek a remedy through the courts.

6. The Mediator will report to, or note for the Office of the Ombudsperson that mediation occurred and whether it was successful.

7. If I represent a homeowners association, or other corporation, I am authorized by the board to mediate and make agreements.

8. Mediation will take place at either: the Carvel State Office Building or the Kent County Levy Court Building, 555 Bay Road, Dover, DE, unless the parties and the Mediator agree otherwise.

9. Procedures used at mediation will conform to the description of "Mediation" on the Ombudsman's website at:

http://attorneygeneral.delaware.gov/fraud/cpu/ombudsman_adr.shtml

10. The Ombudsman's current fee is \$100.00 per hour, for mediation, including travel time, preparation time, and time devoted to drafting a settlement agreement. Costs, if any, are extra.

I understand and agree to pay an equal share of the fee and costs for mediation or as otherwise agreed by the parties.

Other Agreements by the Parties:

Filing Party (Please print name)

Responding Party (Please print name)

Filing Party (Signature)

Responding Party (Signature)

Mediator

Mediator

Date: _____

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON

**Delaware Department of Justice
820 N. French St., 5th floor
Wilmington, DE 19801**

Filing Party (Print or type name)

Responding Party (Print or type name)

Matter #:

AGREEMENT TO ARBITRATE

This is an agreement by the parties to participate in voluntary arbitration. I understand that arbitration is a voluntary and confidential process. Arbitration includes all contacts between the Arbitrator and any party or parties, until a final decision is rendered or the parties discharge the Arbitrator.

This agreement incorporates the issues identified in the Common Interest Community Contact/ Complaint form and attachments submitted in this matter. The parties agree that the arbitrator in this process will arbitrate any dispute arising under this agreement.

____ **If checked here the parties agree the arbitration will be binding.** Please initial if binding.

Filing party _____ Responding party _____

If not checked above, or no agreement, or one party has not initialed, arbitration is non-binding.

____ Check here if either party requests written explanation of the basis of the decision. If not checked, the arbitrator will deliver the result in writing, but will not explain the basis of the decision.

____ If you agree on an arbitrator other than the Common Interest Community Ombudsperson (or designee), please identify the agreed Arbitrator. Contact Information of agreed Arbitrator:

The Arbitrator will contact the parties to set a date, time and place for the arbitration hearing and exchange of documents.

The parties further agree to the following:

- The Delaware Uniform Arbitration Act, Title 10 *Del. C.* Chapter 57 governs this Arbitration.
- At least one representative of each party with authority to resolve the dispute must participate in the arbitration hearing. Delaware counsel must attend the arbitration hearing on behalf of a corporation.
- The Arbitration proceedings are private. Only parties and their representatives may attend, unless all parties agree otherwise.

- The Arbitrator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as Arbitrator in this proceeding.
- All memoranda and work product contained in the case files of the Arbitrator are confidential.
- Any communication made in or in connection with the arbitration that relates to the dispute is confidential. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions: (1) where all parties to the arbitration agree in writing to waive the confidentiality, or (2) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence, which were not prepared specifically for use in the arbitration hearing.
- The parties agree to protect the Arbitrator from civil liability for any act or omission in connection with the Arbitration, unless the act or omission was in bad faith, with malicious intent, or in a manner exhibiting a wilful, wanton disregard of the rights, safety, or property of another.
- The strict rules of evidence shall not prevent the consideration of evidence or testimony.
- As to the Arbitrators' Award, the parties agree:
 - (1) The Arbitrator may grant any remedy or relief that the Arbitrator deems just and equitable and within the scope of any applicable agreement of the parties.
 - (2) In addition to a final award, the Arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders and awards.
 - (3) Upon the granting of a final award, a final judgment or decree shall be a contract between the parties and be enforced as any other contract.
 - (4) The Arbitrator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

Other agreements of the parties concerning the Arbitration:

I understand and agree to pay ½ of the fee for arbitration according to the Arbitrator's or the Ombudspersons current fee schedule, which is incorporated into and made part of this Agreement, or as otherwise ordered by the Arbitrator, or agreed by the parties.

 Filing Party (Please print name)

 Responding Party (Please print name)

 Filing Party (Signature)

 Responding Party (Signature)

 Arbitrator

 Arbitrator

Date: _____

TEMPLATE FAIR ELECTIONS PROCEDURE

[Page intentionally left blank]

Fair Elections Procedure

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON COMMUNITY ASSOCIATION VOTER AND ELECTION SERVICES²⁵

ELECTION OF DIRECTORS, VOTING PROCEDURE: SECRET BALLOT

The success of Community Associations²⁶ depends in large part on the manner in which the Association conforms to and complies with the codes and laws that govern them.

The Common Interest Community Ombudsperson's Act requires the Ombudsperson to develop and publicize procedures intended to result in fair elections for members and officers of a common interest community associations.²⁷

The following "Voting and Election Policy and Procedures" assure a community association of a professional, fair and unbiased election of officers governing the association.

The purpose of these procedures is to ensure and protect the integrity of association elections by adopting and implementing specific election processes and procedures for election by secret ballot.

The Office of the Ombudsperson will provide monitors and vote counting services, intended to result in fair elections for members and officers of a Community Association, when 15% of the total voting interest of a Community Association or 6 unit owners, whichever is greater, petition the Ombudsperson to do so. A charge commensurate with and approximating all costs necessary to defray actual expenses of the services will be payable to the Office of the Ombudsperson.²⁸

These procedures can be adopted if bylaws of the association do not set out a fair voting procedure. These procedures are intended to provide fairness and clarity to the election of officers and members of Executive Boards, and to removal of officers from office. However, they can be used for the many types of votes and voting without a meeting, as described in the DUCIOA:

²⁵ Based loosely upon the California Homeowners Associations' Election process and the DUCIOA. CA HOA's procedures are in turn based upon California State Legislature adopted the "Election Procedure" laws (SB-61) in 2006 (amended several times since); the laws have been recorded in the California Civil Code and include Sections 5100 thru 5145 of the Davis Sterling Act. A number of changes and additions are included in this draft to localize the procedure to Delaware.

²⁶ "Community Associations" is a shorthand term meaning "Common Interest Community Associations" defined as:

"A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The association must have an executive board and the membership of the association at all times consists exclusively of all unit owners . . . The association may be organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful form of legal entity authorized by the laws of this State." 29 *Del. C.* §81-301. "Organization of unit owners' association." Associations include: "maintenance corporations"; "condominium councils"; "cooperative councils"; "homeowners associations"; or any other name appropriate to the type of Association.

²⁷ 29 *Del. C.* §2544 (5)

²⁸ 25 *Del. C.* §§2544 (6), (15).

- Assessments;
- Special Assessments;
- Amendments to Governing Documents;
- Granting of the Exclusive Rights to Use Common Area;
- Budgets;
- Amendments to plats, or property descriptions;
- Changes to rules to restrict uses, or behavior;
- Termination or merger of common interest communities;
- Any other vote required by law;
- Any subject determined by the Association;
- Any Petition signed by a majority of the Associations' members.

Associations may consider alternatives to the procedures set out here. For information concerning voting using internet based services use the search term "online voting and election" or "HOA online voting and election" your web search.

VOTING AND ELECTION POLICY AND PROCEDURES

Election voting is by Secret Ballot and is restricted to unit owners only, unless voting by proxy, as explained below.

CALL FOR ELECTION OR OTHER VOTING MEETINGS

The call for a meeting to conduct the business of the Association including the "Notice of Meeting and Agenda" will proceed in the same manner set forth in the Association's bylaws. The form and timing of notice must be reasonably calculated to reach all unit owners.

An Association must provide notice of the meeting to call for elections or other voting at least 7 days in advance of the meeting, unless the bylaws provide a longer time.

Notice for this Voting Procedure is sufficient if delivered to each Unit Owner by:

- (1) hand delivery;
- (2) delivery by United States mail, postage paid, or commercial delivery service to the mailing address of each unit, or to a different address if the Unit Owner has given the Association one in writing;
- (3) electronic means, if the Unit Owner has given the Association prior written authorization and an electronic address; or
- (4) any other method reasonably designed to provide notice to the Unit Owner.²⁹

The notice of any meeting must state the date, time and place of the meeting and the items on the agenda.³⁰

All Association members, even those who are in arrears on payment of their assessments are entitled to vote on any matter submitted to a vote of unit owners, even if they are delinquent and other privileges have been suspended because of the delinquency.³¹ The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers in filling vacancies is as provided by the bylaws.³²

NAME IN NOMINATION

The Association shall deliver a "Candidate Nomination Form" and an "Issue Form" to all unit owners at least sixty (60) days prior to the election. The Form must be returned to the Association at least forty-five (45) days prior to the election.

A person related by blood or marriage to a sitting board member will be presumed to have

²⁹ DUCIOA § 81-127. Notice.

³⁰ DUCIOA § 81-308. Unit Owners Meeting

³¹ DUCIOA § 81-302 (11).

³² DUCIOA § 81-306 (3).

a conflict of interest to the Association, and may not be nominated for election to the board.

Members of the Association may nominate themselves or other members of the Association.

ELECTION INSPECTORS

The Executive Board must select or appoint "independent third parties" to be the Election Inspectors or Monitors. The Board may choose to have either one or three Election Inspectors. An "independent third party" includes, but is not limited to, a volunteer poll worker with the County Board of Elections, a licensee of the Delaware Board of Accountancy, or a notary public. An independent third party may be a member of the Association, but may not be a member of the Executive Board, or a candidate for the Executive Board, or related to a member of the Executive Board or a candidate for the Executive Board.

The Executive Board must appoint Election Inspectors after the close of candidate nominations but before delivery of the secret ballots to unit owners. Election Inspectors determine where and to whom unit owners must return the secret ballots.

The Duties of Election Inspectors:

1. Determine the number of homeowners or unit owners entitled to vote and the voting power of each.
2. Determine the authenticity, validity, and effect of proxies, if any.
3. Receive ballots.
4. Hear and determine all challenges and questions arising out of or in connection with the right to vote.
5. Count and tabulate all votes.
6. Determine when the polls close.
7. Determine the result of the election.
8. Perform any acts proper to conduct the election with fairness to all members in accordance with this procedure and all applicable rules of the Association regarding the conduct of the election that are not in conflict with this procedure.

SECRET BALLOT

The ballots cast by unit owners must remain confidential until counted. The ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a ballot must not identify the

voter by name, address, lot, parcel, or unit number.

All solicitations for votes by ballot must: 1) State the number of responses needed to meet the quorum requirement; 2). State the percentage of approval necessary to approve each matter other than election of directors; 3). Specify the time by which the ballot must be delivered to the Association in order to be counted, which shall not be less than three days after the date the Association delivers the ballot; and 4). Describe the procedures including time and size and manner by when unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.³³

The voter must not sign the ballot.

- Once the voter completes the ballot, the voter inserts the ballot into an envelope that is then sealed. This is the secret ballot.
- The voter inserts the envelope containing the secret ballot into a second, pre-addressed return envelope and seals it.
- In the upper left hand corner of the outer envelope, the voter must print and sign his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote.
- The outer envelope must be pre-addressed to the Election Inspectors, who will tally the votes.
- The voter mails or delivers the Secret Ballot in person to the location specified by the Inspectors of Election.
 - As an alternative, the voter may complete the ballot at the meeting set for the election, in the same fashion.

The Election Inspectors only count the ballots delivered prior to the polls closing.

Voters may deliver their secret ballots in person on the day and within the time called for the election.

If only one of several owners of a unit is present at a meeting or submits a secret ballot, that owner is entitled to cast all the votes of for that unit.

If more than one of the owners is present or votes by secret ballot, the votes allocated to that unit must be in accordance with the agreement of the majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest by any of the other owners of the unit, made promptly to the person presiding over the meeting. The election inspector resolves all protests and disputes.³⁴

ELECTRONIC BALLOT OR BALLOT WITHOUT MEETING

Any action the Association may take at any meeting of members it may also take without a meeting, if the Association delivers a written or electronic ballot to every member entitled to vote on the matter.

Approval of the ballot is valid only if: 1). The number of votes cast by ballot equals or

³³ DUCIOA § 81-310 (f) (2).

³⁴ DUCIOA § 81-310 (a).

exceeds the quorum required to be present at a meeting authorizing the action; and 2). The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.³⁵

A ballot cannot be revoked after delivery to the Association because of the death, disability or revocation by the person who cast that vote, unless the declaration or bylaws state otherwise.³⁶

Failure to follow the election procedure as adopted by the association will invalidate the ballot and the unit owner's vote.

PROXY BALLOT

The "Secret Ballot" process eliminates or reduces the need for a proxy vote since the unit owner may cast their vote by mailing in the secret ballot. However, any instruction given to a proxy holder directing the vote the proxy holder is to cast shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the owner's vote by secret ballot.

A unit owner may revoke a proxy only by actual notice to the person presiding over the meeting for the election.

A proxy is void if it is not dated. A proxy is void if it states it is revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.³⁷

COUNTING THE VOTES

The Election Inspector shall check off on a "sign-in sheet" that a ballot was received for a unit, as the ballots arrive. The first secret ballot received for any unit is the ballot of record and that is the vote counted. Any additional ballot(s) for the same unit are invalid and void.

All votes shall be counted and tabulated by the inspector or inspectors of the election in public at a properly noticed open meeting of the Executive Board or unit owners. Any candidate or other member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

A majority of the votes cast in person, by proxy or by ballot at a meeting of unit owners for the election shall determine the outcome of the election, so long as the number of votes cast in favor is at least a majority of the number of votes required for a quorum for that meeting.

RESULTS OF THE ELECTION

The results of the election shall be promptly reported to the Executive Board of the

³⁵ DUCIOA § 81-310 (f) (2), (3).

³⁶ DUCIOA § 81-310 (f) (4).

³⁷ DUCIOA § 81- 310 (b).

Association and shall be recorded in the minutes of the next meeting of the Executive Board and shall be available for review by members of the Association. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all Unit Owners.

Ballots shall be retained by the Board for no less than 90 days after the results are publicized.

[Page intentionally left blank]

OMBUDSPERSON'S ELECTION SERVICES

[Page intentionally left blank]

ELECTION SERVICES:

Ombudsman and Department of Election Services for HOA and Condo Elections

The Office of the Common Interest Community Ombudsman is authorized:

- “To provide *monitors* and *vote counting* services to common interest community associations, intended to result in fair elections for members and officers of a common interest community association
- when 15% of the total voting interests in a common interest community association, or
- six unit owners, whichever is greater
- *petition* the Ombudsperson to do so.” 29 Del. C. §2544 (6).

Fees:

The statute requires us to “establish fees for election monitoring; vote counting or other services. The amount charged for each fee imposed must approximate and reasonably reflect all costs necessary to defray the expenses of providing the services. 29 Del. C. §2544 (15).”

Since the statute authorizes us to “provide” “monitors and vote counting” services, we arranged with the State and County Departments of Election to provide some election services.

The Office of the Ombudsman person contracts with the HOA and Department of Elections to provide election services. An Association must contract for these services through the Office of the Ombudsperson.

The DOE will prepare an estimate to the DOJ, Office of the Ombudsperson. The DOJ may estimate additional fees for DOJ personnel and expenses. A fee approximating the actual cost associated with this service must be paid in advance to the Ombudsman’s Office.

The Department of Elections maintains a standard cost list of its election services. The DOE will estimate the costs, to the Ombudsman, in advance. The Office of the Ombudsperson also requires a \$35 fee for filing a “Contact & Complaint” form requesting election services, and may incur expenses of DOJ personnel.

The fees for services provided by the Office of the Ombudsperson (not including any fees required by the Department of Elections) are:

- Ombudsman’s Time: \$55.00 per hour
- Department Of Justice staff volunteers: \$25 .00 per hour/per person

Fees are subject to change.

To Request Election Services:

Fill out the Ombudsman's "Contact & Complaint" form requesting election services.

- Communities must petition the Ombudsman's Office with signatures of 15% of the voting interests of the community.
- Use online forms to create:
 - A "Petition" to the Ombudsman to provide Election services, Exhibit 1. [CLICK HERE for a form Petition](#);
 - A "Resolution" by the Board requesting the Ombudsman to provide election services, if the board is making the request. Exhibit 2. [CLICK HERE for a form Resolution](#);
 - Complete the "Information Required from Community for Ombudsperson's Election Services, Exhibit 3" from your governing documents. [CLICK HERE for a form Exhibit 3](#);
 - Complete a draft "Agreement" between the community, the Ombudsman and the Department of Elections for providing elections services, and agreeing to pay the Office of the Ombudsperson for the services provided. Exhibit 4. [CLICK HERE for a form Agreement](#).
 - Attach all the documents to a completed Ombudsman's "Contact & Complaint" Form with the election portions of the governing documents, and a check payable to the Office of the CIC Ombudsman for \$35.00 (administration fee). [CLICK HERE for a fillable copy of the Ombudsman's "Contact & Complaint" form](#). (See page 4, ¶ 2 to request Election Services.)
- The Ombudsman will contract with the DOE for the services the community desires.
- The community will pay the Ombudsman's Office, based on the DOE's estimate, and the Ombudsman's estimate of additional costs.
- The Department of Elections will provide services, that do not conflict with other scheduled State and national elections.
- The Ombudsman will pay the DOE according the estimate and the contract, and the community will reimburse the DOJ for excess expenses.
The Department of Elections does not accommodate HOA requests during times reserved for Federal, State, local and municipal elections. Please allow adequate lead-time, usually 30 days.

The Agreement between the parties describes the information and services to be provided and the role of each party, the DOE, the Ombudsman, and the Community Association.

The Department of Elections can provide services for several types of elections:

- Preparing scannable Secret Ballots which will be machine read at the Department;
- Voting Machines and trained poll workers;
- The Department of Elections can accommodate proxies and write-in votes from floor nominations;
- We can accommodate weighted votes like those in certain condominiums, based on size or category of units.

If your Community bylaws do not authorize ballots, voting by mail, or electronic voting, consider adopting a bylaw or amendment to the declaration, if necessary to authorize the style of voting. Your voting procedure must comply with your Governing Documents or the DUCIOA, the Unit Properties Act, the Delaware General Corporation Law, or a court order.

The HOA will be responsible for:

- Preparing notices and advertising to the community about the election.
- Determining each unit's eligibility to vote, following the community's Bylaws. **NOTE:** The DUCIOA does not permit suspension of voting rights for owners delinquent in paying their annual assessments. 25 Del. C. § 81-302 (11). This applies to communities created or approved both before and after September 30, 2009. 25 Del. C. §81-119; 81-302 (a) (11).
- Determining the percentage of ownership or voting power, if other than 1 vote per unit, as in certain condominiums.
- Providing a draft-Ballot with positions and terms identified.
- Preparing any ballot questions.
- Providing the names and any information about the candidates and eligible voters.
- Identifying a contact person for the community.

The Association must apply to the Office of the Ombudsperson at least one month before the election.

The Association must supply:

- **Governing Documents:** declarations, certificate of incorporation and bylaws and any other document discussing election procedure;

- **A Mailing List:** of the all eligible voters, with addresses, and email addresses if available, in Excel format.
- The **date of the election**
- A **check** payable to the Office of the Ombudsman upon receipt of the estimate from the Department of Elections.



Agreement between

Department of Elections - [] County Office (DOE)

and

**Department of Justice, Office of the Common Interest Community Ombudsperson
(CICO)**

and

**[Homeowners Association Corporate Name] (HOA)
(address)**

This agreement is between DOE, CICO, and HOA for Election Services to HOA:

The Office of the Common Interest Community Ombudsman is authorized "To provide monitors and vote counting services to common interest community associations, intended to result in fair elections for members and officers of a common interest community association when 15% of the total voting interests in a common interest community association, or 6 unit owners, whichever is greater petition the Ombudsperson to do so." 29 Del. C. §2544 (6).

1. HOA will present a petition to CICO signed by 15% of the total voting interests of their common interest community association, or 6 unit owners, whichever is greater, Exhibit 1; attached to a completed CICO "Contact/Complaint form requesting Election Services, with a \$35 filing fee, Exhibit 2; and an "Application" detailing election services requested, and information. Exhibit 3. The Application is part of this Agreement.

2. DOE and HOA shall confer and devise a mutually acceptable timetable for the timely completion of tasks enumerated below. The parties may revise the timeline by agreement. DOE reserves the ability to establish a "black-out" period for HOA elections during its peak election seasons, when agreeing to a timetable.

3. HOA requests the following election services: ___ballot preparation, ___election monitoring, ___vote counting, ___other (specify below)

HOA will:

- a. Provide to CICO and DOE the information and materials listed on the attached Exhibit 4 at least 1 month before the election date.

- b. The HOA will be responsible for:
- Preparing notices and advertising to the community about the election.
 - Determining each unit's eligibility to vote, following the community's Bylaws. NOTE: The DUCIOA does not permit suspension of voting rights for owners delinquent in payment of their annual assessments. 25 Del. C. §81-302 (11). This applies to communities created or approved both before and after September 30, 2009. 25 Del. C. §81-119; 81-302 (a) (11).
 - Determining the percentage of ownership or voting power, if other than 1 vote per unit, as in certain condominiums.
 - A draft Ballot with positions and terms identified.
 - Preparing any ballot questions.
 - Providing the names and any information about the candidates.
 - Identifying a contact person for the HOA Election.

4. DOE will:

- a. Prepare paper ballots for machine reading
- b. Prepare print and mail envelopes and return envelopes for secret ballots, if requested
- c. Prepare deliver and operate voting machines if requested
- d. Talley the vote through machine reading and other necessary means
- e. Notify CICO of the results of the election
- f. Estimate a Bill of costs before the election
- g. Bill CICO for the costs, after the election

5. CIC will:

- a. Conduct all communication between DOE and HOA
- b. Contract with the DOE
- c. Handle collection and disbursement of all funds
- d. Provide monitoring of the election if requested
- e. Deliver ballots to the DOE, if requested
- f. Assist DOE with vote counting for issues such as write-in candidates, proxies and others, if requested

6. HOA agrees to deposit the estimated cost of the services provided by DOE with the CICO upon receipt of DOE's estimate for costs. HOA agrees to advance all costs to CICO before any election services are provided by DOE. DOE and CICO will submit a post-election bill detailing costs including any additional costs, and if this bill exceeds the pre-election deposit, HOA agrees to pay any additional costs to CICO.

7. HOA will provide all notices of election, and nomination of candidates and other information, according to its governing documents, within the time permitted in the HOA's bylaws, unless otherwise agreed.

Exhibit 1

PETITION OF: [HOMEOWNERS/CONDO/COMMUNITY ASSOCIATION NAME]

**TO: OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON
FOR: ELECTION SERVICES**

This ____ day of _____ 201____, we, the undersigned owners, comprising at least 15% of the total voting interests of the above-named Community Association (the "HOA") or 6 unit owners, whichever is greater, petition the Office of the Common Interest Community Ombudsperson to provide election services consisting of election monitors and vote counting services, under 29 Del. C. Section symbol 2544 (6) which states:

"The Ombudsperson shall have the following powers and duties:...

(6) To provide monitors and vote counting services to common interest community associations, intended to result in fair elections for members and officers of a common interest community association, when 15% of the total voting interests of the common interest community association, or 6 unit owners, whichever is greater, petition the Ombudsperson to do so."

(15) to establish: fees for meetings,... Election monitoring; vote counting; or other services as provided by the Ombudsperson pursuant to this section. The amount to be charged for each fee imposed under this paragraph shall approximate and reasonably reflect all costs necessary to defray the expenses related to providing these services."

By our signatures, we each certify:

- I am a current unit owner in the above listed community.
- The community comprises _____ (#) total units.
- The required minimum number of voting interests comprising 15% for this petition is _____ (#) units.
- My signature is my own, and is genuine, and was written by my hand.
- My signature does not duplicate a voting interest for my unit.
-

Name of Petitioner Printed	Address of Petitioner	Signature

[Sample: Exhibit 2]

**Board of Directors Resolution of
[Name of Community Association, Inc.]**

We, the undersigned, being the Directors of [name of HOA], organized and existing under Delaware Law, and having its principal place of business at [address, Delaware city, Delaware, 12345], ("the Corporation"), certify that the following is a copy of the Resolution duly adopted at a meeting of the Directors of the Corporation, held and convened on [date, 2018], at which a quorum of the Board of Directors was present and voting, throughout, and that the resolution has been not been modified, rescinded, or revoked, and is in full force and effect.

Resolved:

Effective immediately, the Board will contract with the Office of the Common Interest Community Ombudsperson, and Delaware Department of Elections for election services including vote monitoring, ballot counting and other services described in a written agreement.

The Board further resolves to pay the charges estimated by the parties upon acceptance of this agreement, and any balance remaining for additional expenses after election services are provided, pertaining to the election scheduled [date].

The officers of this corporation are authorized to perform the acts to carry out this corporate resolution.

_____	_____	_____ [seal]
Director signature	Printed name	Date
_____	_____	_____ [seal]
Director signature	Printed name	Date
_____	_____	_____ seal]
Director signature	Printed name	Date

Certificate of Secretary

The Secretary of the Corporation certifies as the duly elected and qualified Secretary of the Corporation that the above is a true and correct record of the Resolution adopted by the Directors of the Corporation on [date].

Secretary

_____	_____	_____
Signature	Printed name	Date

Exhibit 3. Application: Information Required From Community for Ombudsman Election

Services:

Issue: This information is required for election monitoring, ballot creation and vote counting	Information: Please provide the information in this block and identify its Source in the next block.	Source: Declaration §; Certif. of Inc. §; Bylaws §; DUCIOA §; Uniform Property Act § Del. Gen. Corporation Law §
Community Name		
Community Address		
Contact Person		
Contact -Telephone -email		
Type of Election		
Annual Election of Directors		
Special Election		
Issue Approval?		
Recall of Officer?		
Date of Election		
Place of Election		
Time of Election		
Services Requested		
Election Monitors		29/ 2544 (6)
Vote Counting		29/ 2544 (6)
Prepare Ballot		
Mail and Count Ballots		
Provide and Operate Voting Machines		
Other		
Notice requirements:		
Nominations		
Election		
Meeting		
Quorum: # or % Required for the Meeting/Approval		

Issue: This information is required for election monitoring, ballot creation and vote counting	Information: Please provide the information in this block and identify its Source in the next block.	Source: Declaration §; Certif. of Inc. §; Bylaws §; DUCIOA §; Uniform Property Act § Del. Gen. Corporation Law §
Method of voting: e.g. Secret Ballot? In Person? Mail-in Ballot?		
# Votes per unit		
Weighted Vote? (condos) List Weights		
Weight of Vote? Declarant.		
Eligibility of Voters		
Renters Eligible?		
Declarant Eligible?		
Delinquent owners Eligible? (DUCIOA requires delinquents vote. §81-302 (a) (11))		
Who is Ineligible to Vote per Documents?		
Hearing Available?		
<i>Provide List of Ineligible Voters</i>		
<i>Provide List of Eligible Voters</i>		
Nominating committee requirements		
Nomination Deadline?		
Committee Report Deadline?		
Term limits? Years?		
Nominations from Floor?		
Limit # of Terms?		
<i>Provide list of eligible candidates</i>		
Proxy requirements:		
Statutory Requirements?		
Deadline Date to Mail proxies to voters		
Deadline to return proxies		

Issue: This information is required for election monitoring, ballot creation and vote counting	Information: Please provide the information in this block and identify its Source in the next block.	Source: Declaration §; Certif. of Inc. §; Bylaws §; DUCIOA §; Uniform Property Act § Del. Gen. Corporation Law §
Ballot questions		
Deadline for notice		
<i>Provide text of questions</i>		

Please Attach:	<ul style="list-style-type: none"> °Ombudsman’s Contact/Complaint form °Ombudsman Agreement for Election Services °Petition of > of 15% of voting Interest or 6 Owners for Ombudsman to provide election services or... °Resolution of Board for Ombudsman to conduct election °Check for \$35 to “DOJ CIC Ombudsman” °Current DE Annual Franchise Tax Report ° List of candidates °List of eligible Voters in Excel °List of ineligible Voters in Excel °Notice of Election °Declaration °Certificate of Incorporation °Bylaws or Code of Regulations °Draft Ballot °Draft Proxy °Text of issues °Attachments for Notice: (Budget; Annual Report, Candidate statements?)
-----------------------	---

[Page intentionally left blank]

**TEMPLATE BYLAW FOR THIRD PARTY
NOTICE TO HOA BEFORE UTILITY SHUTOFF**

[Page intentionally left blank]

Template Bylaw to Require Unit Owners in Common Interest Communities to Name the Homeowners' Association a Third-Party to Receive

Notice of Termination of Service Under HB 177 of the 148th General Assembly.

Introduction

On September 3, 2015, the Governor signed into law a bill aimed at helping common interest communities, including condominiums, cooperatives, and deed restricted subdivisions.

When a homeowner fails to pay a utility bill, the utility has a right to turn off service including water or electricity. That can result in major damage to a home and other property. For example, if electricity is cut off during the winter and a home remains unheated, water lines can freeze, burst, and flood the property. That may cause tremendous damage to the home and to connected homes. This law requires utility companies to have a "third party notification system." It allows a customer to name a person who will also receive notice before the utility cuts off service.

The law allows common interest communities, to adopt bylaws *requiring* homeowners to name the HOA to receive notice before cutting off utility service. The HOA can notify the homeowner, or make other arrangements depending on your bylaws.

Finally, this law requires the Common Interest Community Ombudsperson to prepare a sample bylaw that an HOA can use to require homeowners to name the HOA as a third-party to receive notice before the utility cuts off service.

Each community may choose whether to *require* unit owners to name the association as a third-party to receive notice of a utility shutoff. A community should edit this sample to conform to the language used in its governing documents, and decide if the notice will be required or is optional. As with any bylaw, the community must follow the process stated in its bylaws for adopting new bylaws.

Draft Bylaw:

Designation of Association to Receive Notice of Termination of Utility Service.

Every Unit Owner must [or "may"] name the Association as a third party to receive notice that the utility intends to end service at the same time the utility sends notice to the unit owner. Utility service means gas, water, wastewater, or electricity for use or consumption in any dwelling unit. Every unit owner must sign the following statement, which the Association will complete and deliver to the utility company.

[To: [name, address, and of Utility company]

Regarding: [Unit Owners' Names, address with unit #, community name, city, state, zip code]

Account Number: [Unit Owner's account number for the utility]

I/we, the undersigned are the owners of the property stated above.

We designate [name and address of homeowners' Association] as a third-party to be notified before you terminate utility service at the above address, under the third-party notification program you created pursuant to 26 Del. C. §117 (b). This notification shall be in addition to any other person or entity I have named, or will name.

This notification is to remain in effect until changed by me or my successor.

Signature
Print Name:

Date

Signature:
Print Name:

Date

By the Association:

On behalf of [name homeowners' Association], we acknowledge our willingness to receive prior notice of termination of utility service as a third-party, on behalf of your customer, our association member identified above, but we shall not be held in any way liable to any utility by acceptance of this third-party status.

Send Prior Notice of Termination of Utility service to us as third party designee, to:

[Name and address of association or property manager]

The Board of this Association authorized me to sign this document.

Signature
Print Name:
Title:

Date

COMMON INTEREST COMMUNITY ADVISORY COUNCIL

Office of the Common Interest Community Ombudsman

Name	Organization	Address	Phone	Email
Christopher J. Curtin Deputy Attorney General Common Interest Community Ombudsman	Delaware Department of Justice	820 N. French Street Wilmington, DE 19801	T (302) 577-8600 F (302) 577-6499	CIC.OmbudsmanDOJ@state.de.us Web site: http://attorneygeneral.delaware.gov/fraud/cpu/ombudsman.shtml
Gail E. Launay-Tarlecki, Chair Common Interest Community Advisory Council		Lewes, DE	T (302) 542-8387	gr8fulgail@comcast.net

2019 Advisory Council Members

Name	Organization	Address	Phone	Email	Committee
Patricia Abernethy, Ph.D.	HOA Executive Board	Newark, DE	T 302-836-8447 C 302-415-9403	pabnethy@verizon.net	
William P. Brady, Esq.	The Brady Law Firm PA	240 N. James Street, Suite 106 Wilmington, DE 19804	T 302-482-4124 F 302-482-4126	wbrady@bradylawde.com	-Legislative Issues-Collections; -Community Conflict Resolution /ADR -Education -Mentoring
Tony Campisi	Pennsylvania- Delaware Valley Chapter Community Associations Institute	601 S. Henderson Rd., Ste. 151 King of Prussia, PA 19406-3596	T 610-783-1315 11- F 610-783-1318	tony@cai-padeival.org	- Legislative Issues-Collections; -Mechanisms for Registering Communities -Education
Michael J. Costello	Government Affairs Manager Sussex County	P.O. Box 589 Administrative Building Georgetown, De. 19947	T 302-854-5060	michael.costello@sussexcount yde.gov	
Douglas Denison	Director of Community Relations – Delaware Department of State	401 Federal Street Dover, DE 19901	T 302-857-3038	douglas.denison@state.de.us	-Mechanisms for Registering Communities-

Name	Organization	Address	Phone	Email	Committee
Frederick Fortunato	Benchmark Builders	818 First State Blvd Wilmington, DE 19804	T 302-995-6945	Fred@BenchmarkBuilders.com	Legislative Issues-Collections
Sarah Keifer, Director	Kent County Planning	555 Bay Rd Dover, DE 19901	T 302-744-2471	planning@co.kent.de.us	- Legislative Issues-Collections -Operation of Ombudsman's Office
Gail E. Launay-Tarlecki		Lewes, DE	T 302-542-8387	gr8fulgail@comcast.net	-Education Committee -Mentoring Committee
Leslie W. Ledogar, Esq.	HOA Executive Board	Lewes, DE	T 610-659-8489	Leslie.Ledogar@state.de.us	-Community Conflict Resolution /ADR
Luke W. Mette, Esq. (Marlaine A. White Assistant)	Wilmington City Solicitor	Louis L. Redding City/County Building 800 N. French Street, 9th Floor Wilmington, DE 19801	T 302- 576-2175	lwmette@wilmington.de.gov mawhite@wilmingtonde.gov	
Delores McLamb	HOA Executive Board	Bear, DE	T 571-276-0963	dmc6384485@aol.com	-Mentoring - Legislative Issues-Collections -Operation of Ombudsman's Office
Jordyn Pusey President	Civic League for New Castle County	New Castle County	T 302-388-1101	civicleagueformcc@gmail.com jordynmpusey@gmail.com	Community Conflict Resolution /ADR -Mechanisms for Registering Communities -Operation of Ombudsman's Office
James Smith Assistant Land Use Manager	New Castle County	87 Reads Way New Castle, DE 19720	T 302-395-5400	JSmith@nccde.org	
Charles C. Stirk, Jr. Past President	Civic League for New Castle County	201 North Woodward Avenue Wilmington, DE 19805	T 302-463-2239	civicleagueformcc@gmail.com	- Legislative Issues-Collections
Chad J. Toms, Esq.	Whiteford Taylor & Preston	405 N. King St, Suite 500 Wilmington, DE 19801-3700 and	T 302-357-3253 F 302-357-3273 T 302-829-3043 F 302-357-3273	ctoms@wtplaw.com	- Legislative Issues-Collections; -Feasibility of Mandatory ADR; -Education Committee

Name	Organization	Address	Phone	Email	Committee
Ruth Visvardis	HOA Executive Board	209 Fifth St., Suite 200 Bethany Beach, DE 19930	T 302-836-8001 W 302 654 9262	visvarr@msn.com	-Mentoring Committee
Patricia Woodring	HOA Executive Board	Sussex County	T 302-539-0666	paw-bb@mchsi.com	- Community Conflict Resolution /ADR -Co-Chair Education Committee
Pending	Governor's Designee for Kent County				

Ad Hoc Members

Name	Organization	Address	Phone	Email	Committee
Chris Nichols, President	Seascape Property Management	17563 Nassau Commons Blvd., Suite 3 Lewes, DE 19958	T 302-645-2222	CNichols@Seascapepm.com	-Legislative Issues-Collections Registering CICs
Neal Richard, Association Manager	Seascape Property Management	17563 Nassau Commons Blvd., Suite 3 Lewes, DE 19958	T 302-645-2222	nrichard@seascapepm.com	-Legislative Issues-Collections
Jack Hilaman	Blenheim Marketing, LLC	220 Continental Dr. Ste 410 Newark, DE 19713-4315	T 302-254-0100	jhilaman@blenheimhomes.com	-Legislative Issues-Collections

Common Interest Community Advisory Council Committees

COMMITTEE / MISSION STATEMENT	CHAIR	COMMITTEE MEMBERS
<p>COLLECTIONS; LEGISLATION; and PROCESSES COMMITTEE</p> <p>The mission of the Collections; Legislation and Processes committee is to study and advise the Ombudsperson on:</p> <ul style="list-style-type: none"> -Mechanisms to increase the collection rate of common interest community assessments; -The feasibility of mandatory mediation, arbitration and other forms of ADR, and implementing, if feasible; and -Adoption, amendment or rescission of Delaware law or court rules to improve operation of common interest communities. 	<p>Chad Toms, Esq. Chair</p>	<p>William P. Brady, Esq. Sarah Keifer Delores McLamb Charles Stirk Fred Fortunato Tony Campisi Jack Hilaman <i>ad hoc</i> Chris Nichols <i>ad hoc</i> Neal Richard <i>ad hoc</i></p>
<p>COMMUNITY CONFLICT RESOLUTION/ADR COMMITTEE</p> <p>The mission of the Community Conflict Resolution/ADR committee is to advise the Ombudsperson about developing conflict resolution procedures within common interest communities, including the feasibility of mandatory mediation, arbitration, or other forms of alternative dispute resolution for disputes not able to be resolved within common interest communities and, if deemed feasible, how to implement the processes.</p>	<p>TBA, Co-Chair Patricia Woodring, Co-Chair</p>	<p>Chad Toms, Esq. Ruth Visvardis Jordyn Pusey William P. Brady, Esq.</p>
<p>COMMUNITY REGISTRATION COMMITTEE</p> <p>The mission of the Community Registration committee is to study and develop mechanisms for registration of common interest communities with the State or other political subdivisions.</p>	<p>Christopher J. Curtin, DAG</p>	<p>Tony Campisi Douglas Denison Jordyn Pusey Chris Nichols <i>ad hoc</i></p>

<p>OFFICE OPERATION COMMITTEE</p> <p>The mission of the Office Operation Committee is to advise the Ombudsperson in operating the Office, other than law enforcement and investigation.</p>	<p>Jordyn Pusey, Chair</p>	<p>Sarah Keifer Delores McLamb</p>
<p>EDUCATION COMMITTEE</p> <p>The mission of the Education Committee is to provide training and information to Delawarean's about common interest communities. The committee plans and presents 3 educational seminars on an annual, full day basis, one in each county, and shorter presentations on an as needed, or <i>ad hoc</i>, basis.</p>	<p>Gail E. Launay-Tarlecki, Chair</p>	<p>William P. Brady, Esq. Chad Toms, Esq. Patricia Woodring Tony Campisi</p>
<p>MENTORING COMMITTEE</p> <p>The mission of the Mentoring Committee is to provide timely and useful information to all boards mentored, according to best practices. The goal is to leave the board with a better understanding of effectively running the community by adhering to the governing documents and by promoting community participation.</p>	<p>Delores McLamb, Chair</p>	<p>William P. Brady, Esq. Gail E. Launay-Tarlecki Ruth Visvardis</p>

Common Interest Community Advisory Council
Schedule of Meetings 2019

Meet 6 times in 2019.

- **Fourth Wednesday, every other month beginning in January (*except January & November*= Third Wednesday).***
- **All meetings begin at 3:00.**
- **All meetings allow for 2 hours.**

All meetings 4th Wednesday, (*except November January & = Third Wednesday*)*

January 31, 2019: Sussex County (*Third Wednesday* of January to avoid CAI Annual Law Seminar)

March 27, 2019: New Castle County

May 22, 2019: Kent County

July 24, 2019: Sussex County

September 25, 2019: New Castle County

November 20, 2019: Kent County (*Third Wednesday* of November to avoid Thanksgiving)

This Schedule is on the Public Meeting Calendar.

<https://publicmeetings.delaware.gov/?agencyId=239>

Check for meeting locations, usually in County facilities, agenda and minutes.