

**DELAWARE DEPARTMENT OF JUSTICE  
COMMON INTEREST COMMUNITY  
OMBUDSPERSON**



**2022 ANNUAL REPORT**

**ASSISTING COMMON INTEREST COMMUNITIES TO  
UNDERSTAND THEIR RIGHTS AND RESPONSIBILITIES, AND  
THE PROCESSES AVAILABLE TO RESOLVE DISPUTES**

The Common Interest Community Ombudsperson shall:

*“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.”*

29 Del. C. §2544 (16).

***Acknowledgments***

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

Amanda Lord, Paralegal  
Brian Eng, DAG, Unit Head, Consumer Mediation Unit

## 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.	3
2022 Annual Report	5
2022 was a COVID 19 Pandemic Year.	5
2022 By The Numbers	5
Advisory Council Meetings: 5	5
Ombudsperson's Workshops/Meetings to Owners and Legislators: 27	5
Election Services Rendered: 0	7
Complaints	7
Emails	7
Successful Mediation Referrals to Court of Common Pleas'	7
Highlights of 2022	8
Outreach was dominated by Zoom:	8
Taskforces	9
Ombudsperson Continuing Legal Education and Training	9
Ombudsperson's Website	9
Advisory Council	9
Advisory Council Education Committee	10
Status of the Office of the Ombudsperson	10
Concerns Expressed to the Office in 2022	11
Most Common	11
Concerns Expressed by Common interest Community Associations Boards	11
Concerns Expressed by Owners in Common Interest Community Associations	12
Concerns Expressed by Declarants	13
Legal Developments Impacting Common Interest Communities	14
Legislation	14
Case Decisions	16
Recommendations for Changes to Delaware Law or Court Rules to Improve Regulation and Operation of Common Interest Communities	29
Under Study by The Legislation Committee of the Advisory Council:	29
Advisory Council	35
Additional Committees	36
Advisory Council Activity	36
Legislation; Collection Committee	37
Mechanism to Register Communities	37
Conclusion	38

# 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 unit developments*" (or subdivisions of single-family homes), to understand their rights and responsibilities and the processes available to them. Where possible, the Ombudsperson 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 year. 29 Del. C. §2544 (16). This report covers 2022.

## What is an Ombudsperson?

An Ombudsperson is an individual who receives, investigates, and reports on complaints, and tries to resolve problems fairly.

The Common Interest Community Ombudsperson is a Deputy Attorney General within the Delaware Department of Justice. The Ombudsperson's statutory charge is to "*assist (those involved in 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.*" 29 Del. C. §2544 (2).

## Communities Served by the Office of the Ombudsperson.

Common interest communities include condominiums, cooperatives, and planned communities. All share common features including they are authorized by recorded declarations of deed restrictions, covenants, or conditions, creating mandatory membership associations, to govern 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 their size or when 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 like real estate professionals, lawyers, and Association managers.

### **The Need Addressed by the Office of the Ombudsperson.**

The General Assembly created the Office "to assist common interest communities to understand their rights and responsibilities and to resolve disputes without recourse to the judicial system."

## Overview of the Services Available Through the Ombudsperson.

The Ombudsperson has the powers and duties assigned in 29 Del. C. §2544 (1)-(20). They fall into 5 functions:

- **Create** processes, forms, and rules for: a model Internal Dispute Resolution (IDR) process for communities to adopt or adapt; Alternative Dispute Resolution (ADR) procedures for communities; a "*Contact & Complaint*" form to engage the Office; model Fair Election Procedures; and others.
- **Educate** members of Common Interest Communities throughout the State. In addition to workshops, meetings, and public presentations, the Ombudsperson responds to an increasing number of emails and phone calls requesting help "*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 supply other Alternative Dispute Resolution (ADR) options when the parties consent. ADR is available even without filing an "*internal*" complaint if the parties agree.
- **Investigate** "*potential violations of the law, regulations or documents governing a common interest community*" first by reviewing complaints not resolved at the Association level through the statutorily required "*Internal Dispute Resolution*" and, when necessary, issuing subpoenas and referring meritorious allegations of violations to law enforcement.
- **Election Services** include providing vote monitoring, vote counting, and other services to promote fair elections to homeowners' associations.

An **Advisory Council** also supports and advises the Ombudsperson about on the following subjects:

- Mechanisms to increase the collection rate for common interest community assessments,
- Developing conflict resolution procedures within common interest communities,
- The feasibility of mandatory mediation, arbitration, or other forms of ADR for disputes not able to be resolved within common interest communities and, if possible, how to implement a process,
- Developing mechanisms for the registration of common interest communities with the State or other political subdivision, and
- Any other topic the Council deems appropriate.

# 2022 Annual Report

## 2022 was a COVID 19 Transition Year.

The COVID 19 pandemic affected operations in several ways. 2022 Zoomed past, literally as well as figuratively, with remote work, partial returns to the Office, staff COVID 19 illnesses, vaccines, and oral antiviral medication breakthroughs.

Despite the Pandemic challenges, the Office overcame and created a new “normal” that allowed the work of the Office to continue.

## 2022 By the Numbers

### Advisory Council Meetings: 5

The Common Interest Advisory Council met exclusively by Zoom, 5 times rather than 6. The Ombudsperson canceled the November meeting while recovering from COVID. However, public participation soared from single digits to 70 attendees and is expected to grow. Our email list has grown to 1,093, allowing the Office to maximize participation. The increase in public participation is attributable to the shift to online meetings and the corresponding ease with which members of the public can attend them.

### Ombudsperson's Workshops/Meetings to Owners and Legislators: 27

The Ombudsperson participated in 27 workshops and meetings in 2022, including:

- Many meetings with state and county legislators to discuss the work of the Office and legislation affecting common interest communities.
- A presentation by the Advisory Council's Education Committee on “*HOA Governance*,” –in which over 200 registered to attend and 120 participated on Zoom.
- Community Association Institute (CAI) Chesapeake Chapter “*Board Leadership Development Workshop*.”
- Multiple meetings of and presentations to HOAs throughout the state, including Plantation Park, Barrington, Windsor Commons, and others.



- Participated on the NCCo Taskforce on Condominium Structural Integrity issues. These meetings occurred monthly. The Ombudsperson attended 5 meetings through 2022 and many discussions.
- Participated on the NCCo Recorder of Deeds Taskforce on creating a *"Community Association Portal"* or *"CAP"* for free access to recorded documents of Common interest Communities. The Ombudsperson attended 5 meetings through 2022.
- Presented at Representative Stephen Smyk's Townhall for Sussex County community associations.
- Participated in the Ombudsperson's/CAI *"Joint Board Leadership Development Workshop,"* by Zoom for the first time.

## **Election Services Rendered: 0**

- We received no requests for Election Services during this reporting year.

## **Complaints**

- Formal Complaints: Received: 50
  - 29 –statutorily complete (assigned case numbers)
  - 21 –incomplete (missing information but tracked by the office)
- Complaints Resolved: 49
  - 16 – Statutorily complete complaints Formally resolved awaiting closure.
  - 17 – Statutorily complete complaints Formally Closed.
  - 16– Incomplete complaints closed if consumers do not remedy the complaints deficiencies within 30 days of being notified of such deficiencies.

## **Emails**

- Formal Email Inquiries: 325
  - Responses to these inquiries often require time-consuming research. Consumers receive detailed information and links to, or copies of, useful information.
- General Emails: 18,756
  - Individuals seeking general information and administrative matters that do not require significant research.

## **Successful Mediation Referrals to Court of Common Pleas' "*Community Mediation Program*"**

- The Ombudsperson's Office made 7 referrals to the Court of Common Pleas "*Community Mediation Program*."
  - 5 of the 7 referrals resulted in a successful mediation agreement.

## Highlights of 2022

### Outreach was dominated by Zoom:

The Ombudsperson met with groups almost exclusively by telephone and group Zoom meetings. There were 27 group meetings in 2022, slightly lower than the numbers seen before the pandemic. The Ombudsperson made presentations, workshops and meetings including:

- Presented to the *Delaware State Bar Association's Real and Personal Property Committee, Short Topics Seminar* with other lawyers who are members of the Common Interest Community Advisory Council, Chad Toms, Esq., and William Brady, Esq.
- Advisory Council's Workshop on "*Governance*" in common interest communities. One Hundred twenty-seven members of the public attended this free event. Community Associations Institute-Keystone Chapter recorded the event and has made it available without charge on its website.
- Joint Ombudsperson's/CAI "*Board Leadership Development Workshop*" was reformatted as a virtual event and conducted successfully.
- Advisory Council presented speakers included: (1) former President of the Community Associations Institute Mitch Frumkin, a Professional Engineer, and Reserve Specialist, about the Champlain Towers collapse; and (2) Dawn Bauman, senior vice president of government and public affairs and the executive director of the Foundation for Community Association Research. ]
- New Castle County Council member Lisa Diller and Counsel to New Castle County Council Michael Migliore, Esq. made presentations to the CIC Advisory Council about *Neighborhood Improvement District legislation*.

## Taskforces

The Ombudsperson participated with 3 New Castle County Taskforces beginning in 2022:

- **New Castle County's Condominium Structural Integrity Taskforce** to develop a County ordinance requiring inspections, reserves, and repairs to prevent catastrophic collapses like that of Champlain Towers in Surfside Florida in 2021.
- **New Castle County Recorder of Deeds' online "*Community Association Portal*" (CAP) Taskforce** to provide a single starting point for homeowners seeking important information, including free access to recorded governing documents, and access to County services.
- **New Castle County's Taskforce to develop the innovative "*Neighborhood Improvement District*" (NID)** legislation to assist communities struggling with problems that could be resolved by temporarily providing additional County resources through the creation of neighborhood improvement districts.

## Ombudsperson Continuing Legal Education and Training

- Attended Community Associations Institute's Annual Law Seminar by Zoom more than 3 days.
- DOJ Criminal Division Criminal Discovery Training.

## Ombudsperson's Website

- The Ombudsperson's annotated, indexed, and searchable copy of DUCIOA was updated to include the 2021 amendments.

## Advisory Council

- The Governor appointed Jeffrey Henderson to the Common Interest Community Advisory Council as his designee from Kent County.
- New Castle County's designated appointee to Advisory Council resigned in 2022. The position was still open in 2022 and 2023.

## Advisory Council Education Committee

- We continued sharing information about educational workshop programs with both the Chesapeake and the Pennsylvania Chapters of CAI.
- CAI's Keystone Chapter, through its Executive Director, (Advisory Council member Tony Campisi) began to support our Zoom presentations, including advertising events and providing free distribution of digital materials. CAI Keystone Chapter has also made videos of recorded educational programming accessible to Delawareans for free.

## Status of the Office of the Ombudsperson

- We began discussions about the creation of a database of Common Interest Communities based on Annual Franchise Tax Reports filings. The project is a statutory charge to the Advisory Council: "*...development of mechanisms for the registration of common interest communities with state or other political subdivisions.*" 29 Del. C. § 2546 (f).
- CICO paralegal Amanda Lord has increased efficiency in the office and significantly decreased response times for complaints and other inquiries.
- We created a new website link to Education and Resources linking to the Keystone CAI webpage for on demand education and free access to our "*Governance Workshop*" recording.
- In response to frequent questions about communities transitioning from developer control, we created written materials to answer such questions and included links to CAI's "[\*Best Practices Report No. 7, Transition to Owner Control\*](#)" which is available free through a website link.

## Concerns Expressed to the Office in 2022

### Most Common Concerns Expressed by Homeowners

- Board refusal to provide access to books and records of the community on written request and 5 days' notice remains the top category of complaint. One New Board reported to the Ombudsperson's Office the outgoing treasurer or secretary "*wiped the computer drive*" before turning over records to the new board.
- Complaints around bylaws were the next most common category of complaints. Such complaints included:
  - Bylaws not available to owners
  - Bylaws not followed by boards.
  - Developers failing to create bylaws when the community was under their control.
  - Bylaws lost by the board.

The DUCIOA requires bylaws to be recorded even if the community is otherwise exempt from the DUCIOA. The DUCIOA also requires common interest communities to have bylaws even if they are not corporations.

- Boards filing late responses to Ombudsperson's Internal Dispute Resolution Complaint forms was a common complaint as in prior years. As part of case development, we ask a board to respond to an Internal Dispute Resolution Complaint "*IDR*" or explain why they did not, as an additional complaint.

### Concerns Expressed by Common Interest Community Associations Boards

- Collecting delinquent assessments continues to be a common complaint. In 2022 we continued a long process of updating our "*Guide to Collecting Delinquent Assessments, without a Lawyer*" which was underway shortly after the Justice of the Peace Court modernized several important Court forms.
- Carrying firearms in common areas and in a clubhouse contrary to community rules and regulations was recorded several times. Deed restrictions can limit whether guns can be taken into common areas.

- One resident owner tried to start a separate HOA within the community which he could control and confronted the elected president at her home with his dog, until the President called the police to have him leave. We recommend calling the police for any threatening behaviors or trespassing.
- Boards complaining about "*Bully*" presidents and other board officers were reminded that the board can usually replace an officer by a vote of the board members, under most governing documents.
- In one complaint, an owner, who was a competitor of the community's association management company, incessantly interfered with board decisions and directions.
- One board inquired if they could enforce "*temporary violations of Deed Restrictions*" to see if they wanted to change the governing documents.

### **Concerns Expressed by Owners in Common Interest Community Associations**

- Homeowners shared some of the same concerns as Boards.
- Complaints of rules being "*applied arbitrarily and capriciously*" were received several times and were ruled upon in Chancery Court several times in 2022. Boards must not act "arbitrarily and capriciously," or they may risk personal liability for the lawyers' fees of the complaining owner.
- Several owners complained of board refusal to refund unauthorized HOA fees. This was generally resolved through mediation.
- Many complaints involved Sussex County water-runoff issues, and some involved owners ignoring and modifying approved grading that affected flooding on others' property. County Engineering and the Conservation District Watershed Stewardship division, when contacted, can help resolve some runoff issues.
- Several owners complained they were told there was no HOA despite the declaration that expressly called for creation of an HOA, which was properly recorded. Checking the Plat Plan usually showed the disputant his property was subject to the declaration.
- The Advisory Council is working to create an introductory education workshop for realtors to inform them on properly presenting a community and its association.

- Disputes in 55+ communities included suits in Justice of the Peace Court after a senior citizen was incorrectly told there was no HOA. Sometimes the Governing documents show the contractual limitations, and in some instances the community changed its rules, inviting our inquiry about the process amending the governing documents.
- We receive and process requests for election services, mostly limited to monitoring and vote counting. None were finalized in 2022. The Office of the Ombudsperson can also arrange through the departments of election in each County for a mail-in style election as used in municipal elections in Delaware. This service has quieted some contentious communities.
- One issue involved ARC approval of "*wind turbines*" though not mentioned in the deed restrictions despite a ban on "*Towers*."
- Several complaints involved interpretation of specific words in a declaration. One Dispute was over whether it was ambiguous in a deed restriction to refer to buildings that were "*appurtenant to*" a house. We cannot offer interpretations but offer mediation, arbitration, referral to CCP community mediation and consulting a private lawyer for interpretation.
- Several owners complained that the board refused the Ombudsperson's recommendation of informal "*Meet and Confer*" discussions rather than full formal board hearings. "*Meet and Confer*" is more successful at resolution, maintaining community harmony, and is faster and cheaper than any other Dispute Resolution process.
- One complaint involved the board ARC issuing a "*fine*" when an owner placed 6 stakes across the boundary line between his back yard and a common area, claiming the stakes constituted a "*fence*."

### **Concerns Expressed by Declarants**

- Declarants explained to several communities that during Declarant control, they will not lay the top asphalt coat on roads until construction requiring heavy machinery for construction deeper in the community is completed, since the heavy machinery tears-up the topcoat of asphalt. However, when they receive complaints, they may send a team to repair deep potholes that develop before the roads are finished. We recommend the community contact the developer, then the county that is monitoring the construction, and DELDOT for its authority over dedicated streets.



- Developers often control the community association (during the “*period of Developer Control*”) and the board of their construction corporation. This may impose on the developer a fiduciary duty to act in the best interest of the community association, as explained in the *Nieves v. Insight* opinion summarized the 2019-2020 Annual Report at page 52. Sometimes this is the basis of the Developer Controlled Boards' refusal to provide access to the community's request for access to financial books and records of where the assessment monies are kept and how they are spent.

## Legal Developments Impacting Common Interest Communities

### Legislation

#### The Federal “*Corporate Transparency Act*” (CTA)

This regulation was issued on September 29, 2022 by the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury. It is a final rule implementing the Act's “[beneficial ownership information](#)” reporting provisions. Starting in 2024, many corporations and other entities created in or registered to do business in the United States must report information about their “*beneficial owners*” - the individuals who own or control a company - to FinCEN. FinCEN published a [Small Entity Compliance Guide](#) to help the small business community in complying with the “*beneficial ownership information*” (BOI) reporting rule. The Guide is intended to help businesses determine if they must report their beneficial ownership information to FinCEN. It seems to require Common Interest Communities (including condominiums, cooperatives, and planned unit subdivisions or HOAs) that file papers with the Secretary of State, and other companies, to report corporate information to FinCEN, including identification, contact information and photographic images, supported by documentation, like a driver's license, passport, or state issued identification cards for directors of HOA's and other common interest communities. The effective date is January 1, 2024, for the first filing, but existing corporations have until January 1, 2025, to complete the first filing. The rule will enhance FinCEN and other agencies' ability to protect U.S. national security and the U.S. financial system from illicit use.

["New Castle County Neighborhood Improvement District Act,"](#)

SB 286 was signed into law on November 10, 2022. It lets New Castle County Government establish an entity, a "NID" to assist a community association board by providing enhanced services, beyond those covered by taxes, for modest additional fees, approved by community vote at a public meeting. Enhanced services could include police presence, negotiating contracts, storm water management, etc., at lower costs, governance oversight, and financial oversight, including collecting assessments through the County's HOA Billing Service and accounting for the collected funds.

The Act assembles New Castle County resources under "*one roof*" to focus comprehensively on persistent, and sometimes legacy, neighborhood problems, thus promoting the possibilities of successfully resolving ongoing neighborhood problems.

- The Act provides for creation of a Neighborhood Improvement District (a "*NID*") to work with, not replace the board.
- Creation of a NID provides a source of funding for enhanced services in neighborhoods especially in need of such services, including district-wide snow removal, district-wide trash collection, and maintenance of open space.
- A primary, but not exclusive, source of funding for the enhanced services is current community assessments or a modest addition to the on non-exempt properties if needed after analysis.
- A NID may be started by submission of a voluntary petition by property owners or residents in the district, or by the County, subject to objection by at least 50%, of the non-exempt specially assessed property owners in the district.
- A NID will be created and is to exist only if necessary to resolve problems in a neighborhood, and then, after meeting its goal of resolving persistent neighborhood problems, it will be dissolved.

**New Castle County Water Maintenance Districts.**

At our March CIC Advisory Council Meeting, Michael D. Harris, New Castle County Stormwater and Environmental Programs Manager spoke about a new ordinance, Chapter 13 to the County's "*Unified Development Code*," creating "Water Maintenance Districts" which matches Kent County's program. For a small addition to each homeowner's property tax bill, the County takes over all maintenance of the community stormwater management ponds and other facilities, including mowing

around the ponds. This is required for all new communities and is an opt-in program for existing communities.

### **New Castle County Ordinance on Electric Vehicle Charging Stations**

New Castle County passed an ordinance requiring all new home construction to include infrastructure to install electric vehicle charging stations. This adds little to the overall cost of homes but saves purchasers thousands if they later install a charging station.

### **Case Decisions**

#### **[Worthington Homeowners Association v. Couch, C.A. No.: K21J-01364 JJC \(Del. Super. Ct. Feb. 4, 2022\).](#)**

Worthington HOA transferred a judgement for unpaid assessments from the Justice of the Peace Court to Superior Court against Mr. Couch, and ultimately filed a writ of *venditioni exponas* with the Sheriff to sell Mr. Couch's personal property. The Justice of the Peace Court had entered a judgment by default for \$6,763.90. Mr. Couch filed an emergency motion in the Superior Court to stay pending sale. Mr. Couch substantiated to the Court's satisfaction that the amount of the judgment *may* be grossly incorrect. That showing, coupled with what he alleges to have been improper notice of the underlying proceedings, demonstrated a sufficient risk of hardship and inequity to justify a brief stay of execution. As a result, the Court STAYED the Sheriff's sale of Mr. Couch's personal property. The stay was anticipated to be one of limited duration that would either be lifted or be unnecessary, dependent upon one of two eventualities. In the first eventuality, if the Justice of the Peace Court declined to vacate the judgment to reconsider the matter, Worthington should notify the Court. In that event, the Court would promptly lift the stay without the need for further argument. In the second eventuality, if the Justice of the Peace Court vacated the judgment to reconsider the matter, then Worthington would file a prompt notice to vacate the transferred judgment.

#### **[Wild Quail Golf & Country Club Homeowners' Association, Inc. v. Babbitt, C.A. No.: 2019-0768-PWG \(Del. Ch. Jan. 11, 2022\).](#)**

Wild Quail Golf & Country Club Homeowners' Association, Inc. (HOA) filed a motion in the Court of Chancery to enforce deed restrictions under 10 *Del. C.* §348. The HOA alleged the Babbitt's detached garage addition's roof color violated the deed restrictions by not conforming to the plans submitted to the association, or to the conditional approval granted by the association. The roof color was asserted to be too

dark and not a soft tone when the ARC "AC" approval stated, *"Final approval," which imposed a number of conditions as part of its approval, including the condition at issue here — that "[t]he roof color must match as closely as possible to the existing metal roof on the residence" ("Roof Condition").*" The Court examined (1) whether the Restrictions provide clear, precise and fixed standards for the AC to apply, and (2) whether the AC acted reasonably in imposing the Roof Condition. The Court determined the Restriction were clear, and precise. The roof restrictions *"based on abstract aesthetic desirability are impermissible;"* deed restrictions designed to ensure the "overall harmony of appearance within a community, when that community possesses a 'sufficiently coherent visual style' enabling fair and even-handed application," are permissible. Conclusively, the Court held that *"the AC acted unreasonably in imposing the Roof Condition. The AC did not consider whether the roof's color was a soft tone and determined that the Roof color appears light beige. This is a soft tone. Light beige is a "subdued tint or shade;" it does not catch the eye like a vibrant red or green. Thus, the Roof's color is a soft tone. Even if the Roof color was not a soft tone, the AC did not reasonably apply the Harmony Standard; the AC applied standards that are different than those reflected in the Restrictions; it cannot demonstrate that it reasonably applied the Restrictions in reviewing the Addition."*

It was recommended that the Court deny Wild Quail's claim *"that the Babbitts violated Wild Quail's Declaration of Restrictions by failing to conform to the Association's conditional approval or to the plans they submitted."*

The parties claim for attorneys' fees *"under 10 Del. C. §348 remain to be decided and in the interests of justice and judicial efficiency, exceptions are stayed under Court of Chancery Rule 144(f) pending a decision on the parties' requests for attorneys' fees."*

### [Wilmington Friends School, Inc. v. Alapocas Maintenance Corporation, C.A. No.: 2021-0655-SG \(Del. Ch. June 14, 2022\).](#)

The Wilmington Friends School applied to expand its campus. The Alapocas Maintenance Corporation ("*Alapocas*") denied the school's plans for expansion using the criteria *"to ensure "harmonious" development to deny the School's application, solely on the ground that it will decrease open green space in the neighborhood."* The school brought a declaratory judgment suit alleging that the expansion complied with the deed restriction. The legal issue is that Deed restrictions or covenants limit the use of real property, which has historically been disfavored at law. However, private restrictions on the full use of property, via deed restrictions, are enforceable but are generally in favor of the landowner. *"The burden is on the HOA to show that its actions in enforcing the restrictions are non-arbitrary, and are reasonable as applied."*

The Court looked to precedent from *Park v. Riegel*, where the Master's Report found *"a deed restriction unenforceable because the HOA's decision was nothing more than a delegation to the HOA of development oversight based on its sense of aesthetics-a delegation this Court has repeatedly found unenforceable."* The Court held that the decision to deny improvement based solely on aesthetics was not enforceable, regardless of whether such authority was explicitly granted to an HOA in the deed covenants and considered arbitrary and capricious. Judgment in favor of the School.

**[Yeilding v. Council of Association of Unit Owners of Pelican Cove Condominium, C.A. No.: 2019-0826-SG \(Del. Ch., Apr. 20, 2022\).](#)**

Plaintiffs-Yeildings, unit owners, sued Pelican Cove Condominium Assoc. and an individual owner, Robinson, for four different claims. This suit comes after the Court decided a case in favor of Pelican Cove regarding the maximum number of rental tenants in the Yielding's unit. In reviewing the claims of this case, the Magistrate stated, *"I also find that the Plaintiffs' allegations wander the borderlands that separate merely weak claims from the country of the frivolous."*

The four claims are thus: first, Robinson's unit, unit #2 *"has been altered impermissibly; second, various unit owners have failed to comply at all times with the Declaration and a second governing document, the Pelican Cove Code of Regulations (the 'Code of Regulations'), which (per the Plaintiffs) prohibit obstruction of the decks and/or balconies at Pelican Cove; third, the depth of the marina adjoining the property is insufficient under the latest amendment to the Declaration; and fourth, the HOA has drafted common area rules purporting to regulate renter" guests, which, per the Plaintiffs, violate the Declaration."*

On the first claim of alterations of unit two that added a second bedroom, after hearing testimony from both sides and absent the benefit of expert testimony the Court found both parties credible and that *"they are not in direct contradiction, and I interpret them so as to avoid implied contradiction. Taking Robinson's testimony as true, then, I find that the common elements were not impermissibly altered."*

On the second claim the Court held the Plaintiff's misread the Declaration in their argument that deck chairs are impermissible obstructions. *"The Declaration calls for 'prior written authorization of the council' in order for obstructions such as the deck chairs to be allowed to linger. But the HOA has provided prior written authorization, following the amendment to the Code of Regulations. On May 4, 2020."* The Plaintiff's did not provide reason as to why the May 4 writing was insufficient to confer prior authorization.

On the third claim involving the Marina depth the Court concluded that *“Because Yeilding is assigned to slip 5, he does not have a right to enforce the navigability or lack thereof in slips 1 and 2. Both of the expert witnesses showed that slip 5, assigned to Yeilding, was sufficiently navigable. Therefore, he has not shown a breach of contract under the Declaration.”* The Court additionally noted that the Declaration states:

The pier has 7 boat slips that make up the marina. . . . Each unit is entitled to *one* navigable boat slip. . . . *Should a unit using a slip* that has become un-navigable *wish* to have the slip returned to a navigable condition, the unit shall notify the Condominium in writing. . . . The right of each unit to *a* navigable boat slip is guaranteed by this agreement.

As no meritorious claim had been proven by the Plaintiffs with respect to the marina depth or the subaqueous lease renewal application with DNREC, their request for related injunctive relief was denied.

The fourth claim involving rental rules, specifically #3 that reads: *“No parties or large social gatherings. People other than those in the rental party are not allowed on the property. No visitors are allowed.”* In the Court’s analysis it was found that the Rental Rules treat short-term renters’ rights to the common areas as inferior to that of owners and in conflict with the Declaration. As to the injunctive relief the Court states *“If this were a better world, I would be confident that the parties could agree to a minor modification of the Rental Rules that would permit restriction of the kind of anti-social behavior obnoxious to the HOA, while still in compliance with the Declaration. Sad experience has disabused me of such confidence. Nonetheless, I cannot provide the relief in equity the Plaintiffs seek here.”*

The Plaintiffs’ requests for injunctive relief and declaratory judgment were each individually DENIED.

[Hauge v. Bay Landing POA, Inc., C.A. No.: 2020-0361-PWG \(Del. Ch. Mar. 25, 2022\).](#)

Four homeowners sued the HOA claiming that the deed restrictions do not apply to their property because the deed restrictions were not properly recorded, nor were the homeowners given notice about the restrictions when they purchased their property. The homeowners further alleged that the actions taken by the Board were void because, “the Community’s bylaws require a four-member Board and the Board has been acting with only three members (the “Corporate Law Claims”), and seek

the appointment of a receiver *pendente lite* during litigation, a custodian, or a special master to oversee the POA corporation.”

The Court held that three of the four owners suing had constructive notice of the deed. The Court explained that it considered “whether the Declaration would have appeared in a reasonably diligent search of their chains of title at the time they purchased their properties.” The Court concluded that the three owners had constructive notice of the deed because “The POA shows that it would have - title searchers found the Declaration in their search related to the title insurance policies...issued...Therefore, the Declaration was a searchable document that was reasonably found.” The Court held the deed was properly recorded because “Constructive notice suggests there is a properly recorded deed or other instrument that includes details of the restriction, and which is readily available via a routine title search.” Therefore, the Court granted the POA's Motion for Summary Judgment with respect to Plaintiffs Donald May, Kara May, Jordon Rollins, Julie Rollins, John Barnett, and Nancy Barnett on Counts I and II.

However, in reference to the fourth homeowner, the Court weighed the plaintiff's lack of constructive notice claim and found a material factual dispute about “notice.” The Court explained summary judgment did not apply to one plaintiff because “the Declaration was not recorded at the time they took their Deed.” On February 8, 2013, the Developer conveyed Lot 30 within the Community by deed (“Hague Deed”) to Plaintiffs Stephen Hague and Jessica Hague (collectively, “Hague’s”). On October 30, 2013, the Developer executed and recorded a Declaration of Covenants, Conditions, and Restrictions (“Declaration”) for the Community, which established Defendant Bay Landing Property Owners Association, Inc. (“POA”) as the homeowners’ association for the Community. It was recommended the Court deny the POA's Motion for Summary Judgment with respect to Stephen Hague and Jessica Hague on Counts I and II.

In determining whether the Board's actions were void because the Community's bylaws require a four-member Board and the Board has been acting with only three members (“Corporate Law Claims”), the POA argued that the Corporate Law Claims should be dismissed due to failure to make demand on the board and made no showing that would entitle them to equitable relief sought on the Corporate Law Claims. Plaintiffs argued as derivative because Plaintiffs failed to make a demand on the board and that Plaintiffs otherwise made no showing that would entitle them to the equitable relief sought on the Corporate Law Claims. *“Plaintiffs argue that the Court held the Corporate Law Claims in abeyance following the September 7, 2021, status conference.”*



The Court had little record of Corporate Law Claims and therefore looked further into the facts to clarify the application of law in this circumstance. A derivative suit allows a stockholder to bring a suit on behalf of the corporation for harm done to the corporation. The Plaintiffs classification of the suit was not binding. The Court looked at the nature of the wrong alleged and not only the words in the complaint. The questions considered were: 1. Who suffered the harm and 2. Who received benefit of any recovery or remedy. Stockholders can sue directly to enforce contractual constraints on the Board's authority. Since the plaintiffs were suing to enforce contractual constraints under the governing documents, this would be a direct claim against the POA that is not subject to dismissal. It was recommended *"that the Court deny the POA's Motion for Summary Judgment on Counts III, IV, and V. Finally, I recommend that the Court deny Plaintiffs' Motion for Partial Summary Judgment."*

**[Rapp v. New Castle County Board of Adjustment, C.A. No.: N21A-11-006 FWW \(Del. Super. Ct. May 26, 2022\).](#)**

The New Castle County Board of Adjustment denied Frances and Dean Rapps' application for a variance to build a screened-in porch, which their HOA Architectural Review Committee approved, contingent on County Board of Adjustment approval. The Board denied their application, and the Rapps took the matter to Superior Court on certiorari review (certified for review). The Rapps contend that: *"(1) the Board violated their constitutional right to due process; (2) the Board unconstitutionally took their property; (3) the Board made several errors of law and fact; and (4) the Board's decision is not supported by substantial evidence in the record."*

The Court upheld the Board's denial, saying the Rapps' due process rights were not violated in the way the hearing was held. Though the Board failed to provide a written decision within 20 days of the hearing the Court held that the Rapps did not show they suffered prejudice, harm, or adverse effect from the delay of response. The Court also held while the 20-day timeline is in the Board's Rules of Procedures, it is not mandatory.

The claim of improper notice of the Board's time limits was denied; The evidence showed at no time did the Rapps or their representative object, or bring to the Board's attention any questions or concerns regarding the time limits.

The claim that the Rapps were denied a meaningful and impartial tribunal was denied. The Court found the Board had no personal stake in the outcome of the hearing and said it was a "fair and meaningful proceeding by an impartial and disinterested tribunal...."



The Court explained a regulatory taking *"occurs when a regulation imposed by the government places such a burden on the landowner's use of his or her property that the government has in effect 'taken' the landowner's property."* That did not occur in this case, no regulatory taking occurred because *"the prohibition on the Rapps' proposed building intrusion into the 25-foot setback area in no way amounts to the government taking the Rapp's' property."*

The Court explained that the *"New Castle County's Board of Adjustment receives its jurisdiction over variance claims from 9 Del. C. § 1313, which describes the standard by which the Board reviews an application for a dimensional variance."* The Board used the *Kwik-Check* and *McLaughlin* analysis, which considers 4 factors: 1. Consideration the nature of the zone in which the property lies; 2. the character of the immediate vicinity and the uses contained therein; 3. whether, if the restriction upon the applicant's property were removed, such removal would seriously affect such neighboring property and uses; and 4. whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is permitted use under the use provisions of the ordinance.

The Court found the Board applied the proper legal standard and in its decision, identified the statutory standard and the four-pronged *Kwik-Check* analysis and *McLaughlin's* balance of harms test. The Court concluded that the Board's decision was free of legal error.

Finally, the Court rejected the Rapps' claim the Board's decision lacked substantial evidence. The Court found the Board based its decision on substantial evidence when it concluded that the variance would negatively affect the zoning scheme and impact neighbors' views.

[Swann Keys Civic Association v. Dippolito, C.A. No.: 2021-0614-SG \(Del. Ch. Dec. 30, 2022\).](#)

This case involves boat ramps within a waterfront trailer park located by a lagoon. The Swann Keys Civic Association, through prior litigation, owned title to the common areas. The documents of title were recorded, but did not mention the boat ramps. The Dippolitos are lot owners who live adjacent to the ramps. The Dippolitos discovered that they had a claim to title over the ramps. They were upset over the behavior of ramp-users and had concerns that they may be held liable for any injuries that may arise. In response to this behavior, they physically blocked access to the ramps. The "...

*Association sued to enjoin the barriers, and to quiet title or establish a prescriptive easement in favor of the Association over the ramps."*

The Court explained, " *to quiet title by adverse possession a plaintiff must show by a preponderance of the evidence that she used and possessed the property at issue, in a manner open and notorious, exclusive, and hostile and adverse, for a continuous statutorily prescribed period of years.*" The Court addressed each element of the adverse possession claim, finding the ramps were obvious features, the Association acted as an owner and used the ramps as its own. The Association performed maintenance on the boat ramps and permitted its members to use the ramps since 1969.

The Dippolitos brought counterclaims for trespass. The Court explained, " *there is no evidence that entity has trespassed or encouraged trespass.*"

The Court then addressed the nuisance claim and reserved judgment on whether the Dippolitos established that the current use of the ramps constituted a nuisance, and, if so, what equitable relief would be appropriate.

The title to the land under the boat ramps was quieted.

[Estates of Red Lion Maint. Corp. v. Broome, C.A. No.: 2020-0916-SEM \(Del. Ch. Mar. 30, 2022\).](#)

Estates of Red Lion sued the Defendants Frank and Marcell Broome who lived in Red Lion, alleging the Broomes violated a deed restriction by parking a 2006 van with a roof rack with a ladder on their property. The Declaration of restrictions states:

*Prohibited Vehicles. No trucks, buses, travel trailers, boat trailers, boats, utility trailers, commercial vans, tractors, campers or vehicles immobilized for any reason, shall be kept or maintained on any street, Lot or driveway, except that pick-up trucks up to and including three-quarter (3/4) ton and enclosed vans and sport utility vehicles up to 10,000 pounds G.V.W. shall be permitted, provided they do not exceed a height of seven (7) feet.*

The Court explained, *"The question before me is simple-does the Declaration prohibit the Van?"* The Court interpreted the Declaration under principles of contract interpretation and held the Declaration was unambiguous, permitting the Broomes to keep the van on their property. The parties disputed whether *"the 'height' of a vehicle includes attachments or appendages such as the rack and ladder."* The Court consulted Merriam-Webster's dictionary to find the definition of *"height."* The Court found that *"height"* of a permitted *"enclosed van"* as used in the Declaration does not include attachments or appendages. The Court entered judgment in favor of the Broomes because their van was less than the seven-foot limit imposed by the Declaration of Restrictions.

[Kablaoui v. Gerar Place Condominium Association, C.A. No.: 2021-0700-PWG \(Del. Ch. Mar. 11, 2022\).](#)

Mr. Kablaoui sued the condominium association and Directors for imposing a fee to pay for renovations on his home and new windows as they were common elements, and did not match architectural restrictions. Kablaoui sought declaratory and injunctive relief claiming that the association and its Board lacked authority under the governing documents to charge the fee because Board members had self-serving interests and windows were not common elements. The Magistrate in Chancery recommended that the Court dismiss the complaint.

The Court looked first to the Unit Property Act and explained, *"The UPA and the Governing Documents provide that the Association may assess unit owners for their proportionate share of common expenses. The UPA defines a 'Common Expense' to include 'expenses*

*of administration, maintenance, repair and replacement of the common elements.' If the windows are common elements, then the cost of the Window Replacement is a common expense under the UPA." The Court held "...the Governing Documents provide that the Windows, including glass and framing, are elements of the building 'necessary or convenient to its existence' and are common elements."*

Kablaoui next claimed, " *the Association and the Council breached their contractual duties because the unit owners have the duty and right to replace the Windows.*" The Court again relied on the plain language of the UPA: " *Section 2213 of the UPA states: 'The maintenance, repair and replacement of the common elements and the making of improvements or additions thereto shall be carried on only as provided in the code of regulations.'* And *Section 2211(1) of the UPA provides that the duties of the condominium council 'shall include the maintenance, repair and replacement of the common elements.'* So, under the UPA, the homeowner's association has responsibility for the repair, maintenance, and replacement of the property's common elements, as governed by the property's code of regulations." The Court concluded, " *Because I have determined that the windows are common elements, they are the responsibility of the Council and Association to replace, not individual unit owners.*"

The Magistrate in Chancery recommended dismissing the complaint in its entirety.

[\*\*Cove Owners Association, Inc. v. 1205 Coastal LLC, C.A. No.: CPU6-19-000104 \(Del. Ct. Com. Pl. Feb. 24, 2022\).\*\*](#)

This is a debt collection for delinquent assessments and fees. Coastal is the owner of a building in the Cove Condominium Complex in Dewey Beach. The Court determined whether: 1. Defendant failed to pay its assessed share of a capital improvement loan Cove secured in 2017; and 2. Defendant failed to pay assessed commercial flood insurance costs under the Declaration and Code of Regulations. Defendant admitted, " *it has not paid the loan assessment because sufficient improvement work on its particular building has yet to be undertaken, and it had been in negotiations with Plaintiff to determine the scope and commencement of work....*" The Court looked to the plain language of the declaration and held, " *the relevant language of the Cove Condominium Declaration and Code of Regulations is clear and unambiguous in its creation and imposition of the obligation upon owners to pay their proportionate share of the capital improvement loan.*" The Court found the defendant's argument regarding being over billed for flood insurance meritless because the Declaration and Code of Regulation which covered the flood insurance was properly recorded at Sussex County Recorder of Deeds and reasonably calculated.

The Court found the Cove had met its burden of proof and established that the Defendant failed to meet their obligation to pay all fees and assessment associated with Building 3. *“Judgment was entered in favor of Plaintiff, Cove Owners Association, and against Defendant 1205 Coastal LLC in the amount of \$56,418.92, plus pre-judgment and post-judgment interest at the legal rate from October 1, 2018, plus reasonable attorney’s fees to be determined by the Court.”*

**[Linden Green Condominium Association v. Larkin, C.A.: No. N17L-11-116 FWW \(Del. Super. Ct. Jan. 27, 2022\).](#)**

The *Linden Green v. Larken* suit offers insight that reasonably supports and assists in the understanding of why the Office of the Ombudsperson is valuable when it comes to mitigating the costs of litigation by offering and urging ADR.

Linden Green sued Larkin for failure to pay liens and assessments against her and her townhouse unit. Larkin’s past due monthly assessments were \$12,504.75 and late fees of \$1,270.00. The Court granted Linden Green summary judgment on its complaint for past due monthly assessments as well as *“leave to submit any claim for attorney fees, costs and applicable finance charges at the conclusion of this litigation.”* In May, 2021 Larkin paid the past due assessments and late fees in full.

Larkin counterclaimed for Linden Green’s failure to comply with its obligations under the Declaration and Code of Regulations by failure to maintain the common elements of the association, which, caused rain to pool and accumulate near Larkin’s unit. This accumulation of moisture caused mold to grow on the interior surface of the foundation, which damaged Larkin’s drywall, baseboards, and hardwood floors. Larkin sought damages to return her unit to a safe and sanitary condition, damage to her HVAC system and personal property. Larkin requested costs and attorney’s fees, despite not requesting them in her counterclaim as required by court rules.

A two-day bench trial was held, and the following specifics were considered in deciding as *“the Court is the factfinder, and the plaintiff must prove each claim by a preponderance of the evidence. A preponderance of the evidence exists upon ‘the side on which the greater weight of the evidence is found. Because the Court is the finder of fact, it is up to the Court to weigh the credibility of witnesses and resolve conflicts in witness testimony.”*

- 1) Whether expert evidence is necessary to prove Linden Green is liable for damage to Larkin’s home or whether other evidence can be relied on to prove causation?

- a. *"The Court concludes that expert evidence is not necessary to prove causation because the photographs submitted into evidence are sufficient proof."*
- 2) Is Linden Green responsible for the damages?
  - a. Exterior leaks were the cause and was obvious from the extensive photographic evidence. As such, Linden Green is responsible for certain damages caused by the water and mold.
- 3) A specific itemization of damages for each claimed item.
  - a. The Court found that Larken was entitled to \$18,840.63 for repairs and lodging. *"Repair estimates are acceptable devices to measure damages."*
  - b. *"Bobby Friant of ServPro to establish repair and remediation costs for her unit. Friant testified the total costs for repair and remediation amount to \$15,340.63, broken down as \$3,575.65 for interior remediation, \$8,995.82 for interior repairs, \$293.06 for general repairs, and \$2,294.10 for storage of equipment during repairs. The Court finds this testimony credible and accepts it. Therefore, this Court awards Larkin \$15,340.63"*
  - c. *"Larkin is entitled to five weeks of lodging at a rate of \$100 a night, amounting to \$3,500."*
  - d. Based on testimony the Court did feel that both parties shared some of the blame for the repairs not being done sooner.
- 4) Larkin is Not Entitled to Diminished Value Costs, Damage to Personal Property Costs, Towing Charges, Post-Judgement Interest, Linden Green is not responsible for the HVAC, and is not entitled to punitive damages.
  - a. At no time in Larkin's prayer for relief or pre-trial submissions did she claim diminished value damages.
  - b. Larken did not show that *"Linden Green requested the towing of her vehicle, or any evidence that Linden Green contacted the police after the towing. There is no reason the believe that Larkin's vehicle was towed for any reason other than it was perceived to be illegally parked with an expired registration."*
  - c. The Court accepted and agreed with John Meredith, the First State Contractor approved by Linden Green that the HVAC unit was working after his visit. Additionally, it was noted that the unit was *"well past its life expectancy and there is ample reason to believe it ceased functioning for that*

*reason. Because of the insufficiency of evidence as to the cause of the system's failure and the absence of evidence as to the depreciated value of the HVAC unit, the Court does not award damages to Larkin for the HVAC unit."*

- d. There is a high standard for imposing punitive damages in contract cases and plaintiff must show the breach was *willful* and *malicious*. The Court held Larkin's claim of breach of fiduciary duty of loyalty was unfounded as she *"failed to prove it was breached because she did not allege that any Council member used his position for personal gain."* The Court found that evidence showed Linden Green attempting to make repairs while Larkin denied access to the unit and therefore shows the conduct of Linden Green was not willful or malicious. *"Pursuant to § 81-302(a)(11), Linden Green properly chose to suspend Larkin's parking privileges for non-payment of assessments. At the time Larkin's spot was removed, she was six months delinquent on her assessments. Larkin's additional claim that a hearing date was not provided by Linden Green does not prove a willful or malicious breach of contract required for punitive damages. She is not entitled to any punitive damages, much less treble punitive damages."*

5) Should Linden Green should receive attorney's fees?

- a. Linden Green seeks costs and attorney's fees of \$116,554.06. That amount represents attorney's fees and costs for the entire litigation, including Larkin's counterclaim.
- b. Larkin asks for \$113,955.31. Together attorneys' fees and costs exceed \$230,000.

*"The criteria for awarding fees are well established. Delaware follows the 'American Rule' by which 'prevailing litigants are responsible for the payment of their own attorney's fees.' A court may not order the payment of attorney's fees unless the payment of such fees is authorized by some provision of statute or contract."*

The Court decided Linden Green is entitled to attorney's fees on its complaint pursuant to Linden Green's Code of Regulations and 25 *Del. C.* § 81-316(g) authorized fees, but Larkin is not entitled to fees on her counterclaim since fees were not authorized by law.

Pursuant to its declaration and regulations *"Linden Green is entitled to prejudgment interest at 18% on Ms. Larkin's delinquent balances from July 15, 2016, until Linden Green's Council repealed the interest charge on March 1, 2018."*

Larkin made no compelling substantive argument why the Court should depart from the "American Rule" followed in Delaware and the Court declined to do so.

Post-trial motions submitting revised the attorney fee award following trial considering the Courts decision of 1/27/2022. The following considerations were reviewed:

*"In summary, the Court found: 1. for Larkin and against Linden Green in the amount of \$18,840.63 on her counterclaim; 2. Linden Green was entitled attorney's fees, costs, and pre-judgment interest on its complaint, but only as to its complaint; and 3. Larkin was not entitled to attorney's fees but was entitled to costs on her counterclaim, but only on her counterclaim. The Court then solicited an amended application for attorney's fees and costs from Linden Green limited to those fees and costs related to its successful complaint, and a calculation of pre-judgment interest. The Court also solicited a calculation of costs from Larkin. The Court has considered the parties submissions and awards to Linden Green: (1) attorney's fees of \$34,307; (2) costs of \$1,727.55; and (3) pre-judgment interest/finance charges of \$940.40. The Court awards Larkin costs of \$611.75 and post-judgment interest at the legal rate."*

**[Gerald N. and Myrna M. Smernoff Rev. Trusts v. The King's Grant Condominium Assn., C.A. No.: 2020-0798-PWG \(Del. Ch. June 15, 2022\).](#)**

Plaintiffs, Gerald Smernoff and Myrna Smernoff own Unit 15 of Building C ("Unit 15") at the King's Grant Condominium had a dispute with the condominium association regarding who is responsible for repairing and/or replacing water damaged exterior windows, doors, and walls in the owners' unit. *"George, Miles & Buhr, LLC performed a water test on the north entry door and glass wall of Unit 15 ("Window") and found, in a report dated January 28, 2015, that there was water leakage around the Window and recommended replacing the sealant around the Window."* The owners argue that the exterior windows, doors, and walls are common elements and the obligation to repair and/or replace them falls on the association, while the association contends that the condominium's governing documents assign the duty to repair or replace all windows and doors on the owners.

The Chancery Master held: *"...there is ambiguity whether the Window is a common element, since the Governing Documents can be interpreted as showing that windows are a common element or, in the alternative, as evidencing an intent that windows attached to a unit be treated as part of the unit and not as part of the common elements. The Declaration gives unit owners' responsibility for maintaining and repairing 'windows ... in such unit.' If the windows in a unit are common elements, then the phrase 'in such unit' is potentially rendered meaningless because the Declaration defines 'common element' and 'unit' as exclusive of the other."*

*"Because I find that material issues exist concerning whether the Window is a common element and it is desirable for the Court to inquire more fully into the facts to clarify how to*



*apply the law in this case, I conclude that summary judgment is not appropriate, and recommend that this matter proceed to trial on these issues."*

The Letter Opinion of October 10, 2022, notes *"the Contracts assign liability for window replacement to the Owners, and other portions assign such liability (for common elements, including the window in question) to the Defendant. The Chancery Master correctly found that ambiguity resides in the interpretation of the Contracts."* A full record was advised before a ruling on the merits could be made.

*"Wise parties would consider settling litigation concerning replacement of a window. The same wise heads, if they could not bear to compromise, might seek to submit the matter to the Master for decision on a stipulated record, and avail themselves of a stipulation under Rule 144(h) to permit the Master to act as a final arbiter of their controversy. In any event, given the issues at stake, piecemeal exceptions are neither efficient nor desirable. Any further exceptions shall be preserved for review following a final decision of the Master on all remaining issues."* The parties cross-exceptions were denied to the extent the foregoing requires an order to take effect.

The plaintiffs sought re-argument from the Vice Chancellor. The Court denied re-argument because, *"plaintiffs, however, cite neither a mistake of law nor a misapprehension of fact in the Decision."* The plaintiff sought *"re-argument"* to persuade the Vice Chancellor to reassign the case to himself, to expedite final relief. The Court explained, *"any request for reassignment should be made to the Master to whom the case is assigned, for her recommendation, or directly to the Chancellor; Plaintiff's request to me is in an arena to which my writ does not run."* Motion for re-argument denied.

### **[Council of the Village of Fountainview Condominium v. Corrozzi-Fountain View LLC, C.A. No.: N17C-06-027 WCC CCLD \(Del. Super. Ct. June 9, 2022\).](#)**

PNC Bank held a mortgage on Village of Fountainview Condominiums in 2008. During the economic downturn, the unfinished community was not selling units, and the bank petitioned Court of Chancery to appoint a receiver to finish the remaining units. The Receiver learned that the community had moisture and water damage in all three Buildings. The Receiver filed a motion in Chancery seeking court approval to transition control of the community association to owners. The Court approved the turnover process and the newly elected condominium association met for the first time.

Defendant contractors claim the Receiver was the condominium council that failed to bring suit "*within three years of having at least inquiry notice of the water damage, and his failure to act timely is a bar to the litigation.*"

The Court disagreed and granted partial summary judgment in favor of the Receiver holding, "*...the Court agrees that the facts here are somewhat unique in that the condominium fees were being collected by the receiver appointed by the Court of Chancery.*" The Court reasoned,

*"Here, the receiver did what was expected and when appropriate turned over the condominium management to the condominium association. Specifically, members of the Fountainview Council were elected on September 25, 2018, and held their first meeting on October 18, 2018. It would be from this point that the condominium association's obligation to timely file litigation would begin. Since here we have the unusual situation of a suit having been filed before the owner association was created, the litigation is obviously timely filed by the owner-managed condominium association."*

*"The only reasonable outcome to protect the rights of condominium owners against the unscrupulous conduct of the builder/developer is to create a clear line delineating when the condominium owner association obligation begins. In most cases, this will be when sufficient units have been sold to allow the creation of an owner-run association. It is at this point that it is fair and appropriate to begin the statute of limitations on any claim that they wish to proceed forward with in the future.*

*It is likely that the abuse noted by the Court is one of the reasons for the passage of the Delaware Uniform Common Interest Ownership Act ('DUCIOA') ....25 Del. C. § 81-311(c) which specifically states that, 'any statute of limitations affecting the association's right of action against a declarant under this chapter is tolled until the period of declarant control terminates.'*

It is noteworthy that DUCIOA § 81-311, which the Court quoted above is among those listed in § 81-119 as applying to pre-enactment community associations.

Plaintiff's Motion for Partial Summary Judgment was GRANTED.

A second motion before the Court was a request for summary judgment by a third-party Defendant, Anthony Kim. Kim was sued by United National Construction Company, Inc. ("United"). Plaintiffs alleged that the roof, siding, and gutters were negligently installed. "*United subcontracted Anthony Kim to install roofing, siding, and gutters for the condominium. To the extent that Plaintiff is asserting the roof, siding, and gutters were*

*negligently installed, United alleges that Anthony Kim—as sole proprietor and subcontractor—is responsible for any proximately caused damage.” Kim alleged he did not substantively work on the condominium.*

Anthony Kim explains that he collected trash, took lunch orders, and delivered construction materials. United’s corporate witness and vice president—Judy Kim, who is also Kim’s aunt—testified *“that Anthony Kim was a new college graduate trying to learn the family business. As such, Judy Kim asserted that Anthony Kim was essentially an intern and it was David Kim—Anthony Kim’s father and Judy Kim’s brother-in-law—who ran the condominium construction site.”*

United argues the Motion for Summary Judgment should be denied as there is *“a genuine issue of material fact as to whether Anthony Kim was the subcontractor hired by United and therefore a responsible party to this action.”* United did not have a contract between United and Anthony Kim *“due to the length of time that transpired between the actual construction of the condominium complex and the instant lawsuit.”* To prove their contractual relationship, United relied on a Certificate of Liability Insurance that names Anthony Kim as the insured subcontractor and United as the Certificate Holder for the relevant time period.

*“At the time this Motion was filed, and argument occurred, there continued to be significant issues as to the role Anthony Kim played in this construction or at least the role his family placed him in. The Court finds these questions remain and the record presently before the Court is not sufficient to grant summary judgment. There appears to be significant disputed issues of fact that perhaps only a jury will be able to resolve.”*

Motion for Summary Judgment was DENIED.

## **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 "*Legislation-Change of Law Committee*" is considering several proposals for changes to law or Court rules. Besides the subjects the Committee selects, the Ombudsperson submits subjects for study for consideration, as issues are uncovered.

The recommendations identified in the 2021 Annual Report remain recommendations for study and change. They are restated below, with the following additions or changes.

- Section 81-324 (a) "*Adoption of a Budget.*" The DUCIOA currently exempts a declarant in control from reporting "*a summary of the budget, including any reserves...*" a departure from the Uniform Common Interest Ownership Act (UCIOA) on which it is based. The italicized words are not in the UCIOA:

*"Within 30 days after adoption of any proposed budget after the period of declarant control, the executive board shall provide to all unit owners a summary of the budget, including any reserves and a statement of the basis on which any reserves are calculated and funded."*

This exception is not in the UCIOA.

## **Under Study by The Legislation Committee of the Advisory Council:**

### **Reserves for Planned Subdivision Communities**

The complete, catastrophic collapse of the Champlain Towers Condominium in Florida, resulting in one hundred horrible deaths raised nationwide interest in examining reserves to support inspection and repairs of structures to avoid such catastrophes. The DUCIOA requires budgets for condominiums and cooperatives to include reserve funds for repair and replacement of common elements, § 81-324 (a), and reserve studies prepared by experts must be fully funded. Owners in noncondominium and cooperative, planned subdivision communities with significant, expensive amenities (e.g., swimming pools, club houses, playgrounds, roads, streetlights, etc.) expressed concern that their community is not funding (or adequately funding) a "*repair and replacement reserve*" account, as required by the DUCIOA or 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.

The Taskforce on Condominium Structural Integrity is discussing a new County ordinance requiring periodic inspections of structure of concrete and steel buildings, and modernization of DUCIOA § 81-315 dealing with Reserve studies that would require them of all common interest communities, to be prepared by credentialed personnel, according to national standards, and recorded in the recorder of deeds offices, abandoning the "component style" assessment percentage in favor of "adequate funding" calculated by credentialed reserve specialists, among other improvements.

### **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 separate 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 online with the Division of Corporations. The Ombudsperson proposed accepting the Annual Franchise Tax reports of common interest communities as their "*registration*" but requiring additional information, including: an email address for the community or a responsible officer, (which is required for online filing of an AFTR) if any. The Div. of Corporations stores AFTR records only in unsearchable image files.

### **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 were rescued from foreclosure when notice was given to the homeowner shortly before Sheriff's sale. This can happen for innocent reasons. One innocent reason can arise from New Castle and Kent Counties voluntary programs to bill and accept payment of assessments, which they pay to associations periodically. The Counties send two or three follow-up billings. However, the counties do 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, and recorded a lien. Liens may include payment of the delinquency penalties and interest. Notice to the homeowner that a lien will be recorded creates an opportunity for resolution that may avoid the cost of recording a lien, and mounting fees, penalties, and interest. Nothing now prevents or requires providing notice of recording a lien against a

property. Legislation in other states is beginning to include this among other protections already available under DUCIOA.

### **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 intervening years. §81-306 (6). Owners in noncondominium/cooperative communities like “Planned Unit Developments” reported problems of improper financial accounting by declarants and sometimes theft by a treasurer. In another complaint a community commissioned an audit, but the CPA declared the books and records “un-auditable.” Audit requirements could extend to non-condominium/cooperative communities and are considered a best practice. The Advisory Council presented a CPA as a speaker at an Advisory Council meeting to address concerns about the expense of audits to smaller and self-managed communities, including a recommendation to consult with smaller CPA firms and asking about their experience with smaller community association audits.

### **Earlier Disclosure of Governing Documents to Purchasers.**

The DUCIOA requires that sellers provide copies of governing documents and other important information to purchasers by the date of signing contract to purchase a home in a common interest community in §§ 81-408 (a); 81-409 (a). Many homeowners report complete unawareness of bylaws 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. Others have asked if they have to be paper documents or can be emailed. Providing documents well before the date of signing, 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 Advisory Council was undertaking a project to draft a Transition Manual to help acclimate new Boards and owners on the responsibilities of managing a community after transition from developer to owner control. That process was terminated when in 2022, the CAI “*Best Practices Report No. 7*” was updated to “Transition from Developer to Owner Control.” This offering can be Delaware-ized. This addresses many best practices for transition. 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, when it applies, 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 used to 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 preexisting, are unaware of essential business practices including:

- The need for filing state and federal nonprofit franchise tax forms to maintain their nonprofit status.
- Required Internal Dispute Resolution statutory processes.
- Collection procedures, some unique to Delaware.
- Many other governance issues.

Some states require declarants to provide training by recognized certifying groups like CAI and others, at no charge to new board members during declarant control, and the first Owner elected board.

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, as required by the DUCIOA, and introduce newly elected boards (and those interested in running for the board seats) to the process of running a community through training and transparency to see how the association must run. Most 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 Ombudsperson's Joint CAI "*Board Leadership Development Workshop*," or certify they have taken online courses.

### **Collections Policy.**

Two attorneys provided a draft of a "*Collections Policy*" and a draft of legislation requiring 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 the Advisory Council's

Legislation Committee.

### **Chancery Court Jurisdiction Sharing.**

In 2021 Senator Stephanie Hansen approached the Ombudsperson's Office, the Chancery Court and the Justice of the Peace Court to discuss whether some Chancery jurisdiction could be shared with the Justice of the Peace Court for faster and cheaper resolution of some frequent Common Interest Community issues. The Ombudsperson's Office identified the two most frequent complaints we receive seeking mediation or arbitration: 1.) Board refusal to provide access to, or copies of association books and records, usually financial records dealing with expenditure of assessments; and 2.) Board delay or refusal conducting Annual director elections required by governing documents. While these are "*core jurisdictional issues*" of the Court of Chancery, the Court identified governance issues, mainly Architectural Review committee or "*ARC*" complaints, which we see far less than records and elections complaints.

### **Amending 10 Del. C. §348.**

This statute allows the Chancery Court to order expedited *mandatory* mediation of cases seeking interpretation and enforcement of deed restrictions in HOA disputes, but not condominium disputes. Extending it to Condominiums would extend its value. Experience shows that while mediation might be expedited, discovery demanded by the parties after mediation often extends the time to resolution to rival un-expedited trials. The statute limits the Court's discretion to award attorney's fees by permitting it to order the losing party to pay the attorneys' fees of the winning party after trial, with only limited judicial discretion without balancing interests normally required by the "*American Rule*" (wherein parties generally pay their own attorneys' fees). The risk of attorneys' fee awards increases the stakes and hardens positions, making cases harder to settle. Instead, they become "*winner take all.*" in prior years, the parties in several cases opted to file cases without reference to this section, resulting in each side bearing its own attorneys' fees and costs. Some cases reported above involve litigation over the award of attorneys' fees under §348.

### **Registering Community Association Managers.**

Complaints disclosed instances of community association managers providing false or inaccurate information to owners and potential owners and several instances of "*borrowing*" Community association funds for personal purposes. CIC Association managers are not licensed like real estate property managers. The Ombudsperson has recommended and sought comment from Community Associations Institute and has asked the Advisory Council to explore minimal registration requirements including:



background checks, certificates from respected education programs, experience requirements, bonding and insurance requirements, and supervision by the Division of Professional Regulation. Two states with Ombudsperson's programs only established registration requirements after two- million dollars of association assessments were embezzled by association managers. Bonding and background checks came too late in those states.

### **Additional Education of Real Estate Sales Agents About Common Interest Communities.**

The Ombudsperson receives several complaints each year that the purchaser told the real estate agent or sales representative they did not want an HOA community, or they were never informed that they were buying into a Common Interest Community, until they received an invoice for the annual assessment. Our Office refers complaints to the Real Estate Commission, but the persistence of these types of complaints suggests greater training is required. In 2021 a new connection was made with a Council member, a past president of the Real Estate Agents association. We are discussing and planning educational programs for Continuing Education of agents about the Office of the Ombudsperson, and special information specific to Common Interest Communities.

## 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 position including:

- A representative of the real estate sales and development industry

A list of the members of Council is available online. Advisory 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, one position remains unfilled.

The Advisory Council formed committees to study the topics assigned by the Act. In 2018 the Council reorganized the Committees around common functions and created Mission Statements. The standing committees are:

- 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 few communities in 2021 with only one or two requests.

Another committee formed by the Advisory Council in 2016 is the Education Committee. It assisted in developing each of the educational programs presented in 2017 through 2021 and is developing more programs of interest to common interest community members for presentation in 2022. Members of the Committee develop topics, and agendas, assist in identifying and arranging guest speakers, and participate by speaking at workshops. In 2021, the pandemic limited live presentations, but Zoom meetings replaced them, including the Board Leadership Development Workshop presented jointly and with tremendous assistance from CAI's Keystone Chapter. The Committee is planning repeat presentations by Zoom of Governance, Collections and Transition workshops prepared in prior years with demonstration trials of Personal Debt Lawsuits to Collect Delinquent Assessments without a lawyer, before a Justice of the Peace in each county. At several workshops the distinguished panel included the Commissioner of the State Human Relations Commission, the President or President-elect of the State Bar Association, a Deputy Chief Magistrate of the county, and the lowly Ombudsperson. (All but one of those is a member of the Advisory Council.)

## **Advisory Council Activity**

The Council met 5 times in 2022, with a quorum at all meetings. The meeting schedule is on the Ombudsperson's website. All meetings were conducted remotely via Zoom. The switch to remote meetings has caused public attendance at meetings to skyrocket. Pre-pandemic we would have between 0-6 members of the public attend in person meetings. Now we have 38-70 members of the public attend. This has greatly increased the value of the time the council reserves for public comment at each meeting.

## **Selected Committee Activity:**

### **Legislation, Collection Committee**

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 2021 the committee studied and prepared an update to the Posted manual on "*Collecting Delinquent Assessments Without a Lawyer,*" a guide for associations and members, focusing on personal debt lawsuits

in Justice of the Peace Court without hiring a lawyer. This Guide has been available on Ombudsperson's Website in electronic format, with live links to many forms and videos, and is available for download to personal computers. Shortly after it was published, the Justice of the Peace Court replaced several key forms, so an update was needed and should be finalized in 2022. The Guide was the core of an educational workshop in each county beginning 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 at the Division of Corporations Annual Franchise Tax Report 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. Draft legislation is circulating for comments on this approach.

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 Report forms, state and federal, registering under the Corporate Transparency Regulation of Fin Cen, passed in 2022, and recording bylaws, among others. Legislation is likely needed to provide the information and require the few non-corporate community associations to file with the Division of Corporations.

## Conclusion

Vice Chancellor Parsons made these comments about Common Interest Communities more than a decade ago, in 2010:

### **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 Vice Chancellor 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 to date 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 Ombudsperson'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 Keystone Chapter, which received an award from CAI for the Joint presentation with the Ombudsman's Office. The Advisory Council presented three of its own Workshops: "*Collecting Delinquent Assessments in JP Court Without a Lawyer*," "*Governance*" and "*Transition*." Similarly, the Advisory Council presented a workshop and several presentations in 2022 besides the CAI Joint Leadership Workshop. The Council planned more workshops for 2022, but could only present one, due to the COVID 19 Pandemic. 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