

Implementing a Complaint Procedure

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What is a complaint procedure?

- It is a procedure that associations are required to establish to provide for resolution of written complaints from members of the association and citizens.

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What is a complaint?

- The complaint must concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association *inconsistent with applicable laws and regulations.*
- Complaints regarding decisions made by an association based on the governing documents/condominium instruments are not covered.

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What goes into a complaint procedure?

- Three sources:
 - Va. Code Ann. § 55-530
 - CIC Ombudsman Regulations *
 - Governing Documents or Condominium Instruments

*The CICB has proposed regulations that are in the public comment phase. The public comment phase ends on March 18, 2011. All references herein are to the PROPOSED CIC Ombudsman Regulations.



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Va Code Ann. § 55-530E

- CICB must establish regulations that require associations to establish a complaint procedure.
- Associations must keep a record of each complaint for no less than one year.
- Associations shall provide complaint forms or written procedures to a person wanting to make a complaint.

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Va Code Ann. § 55-530E

- Forms or procedures must include:
 - address and telephone number of the association or its manager to which complaints shall be directed
 - mailing address, telephone number, and electronic mail address of the CIC Ombudsman
 - clear and understandable description of the complainant's right to give notice of adverse decision to CIC Ombudsman

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CIC Ombudsman Regulations

- Establish specific requirements for the complaint procedure.
- Establish association requirements for distribution of the complaint procedure.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

1. The complaint must be in writing.
2. The association must establish a process on how complaints are delivered to the association.
3. The association must acknowledge the complaint within 7 days of receipt, in writing by hand delivery or mailing by registered or certified mail or by electronic means if the sender retains sufficient proof of electronic delivery.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

4. The association must have a reasonable, efficient, and timely method to identify and request additional information necessary to process the complaint.
5. The association must set a reasonable time frame to respond or to dispose of the complaint if the information is not provided.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

6. The association's must clearly describe any specific documentation that must be included.
7. The complainant must include specific references to any laws or regulations that are applicable to the complaint.
8. The complainant must include the requested action or resolution that he seeks.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

9. The association must provide notice of the date, time, and location when it will consider the complaint to the complainant by hand delivery, or registered or certified mail or electronic mail.
10. The notice must be sent within a reasonable time prior to the date the matter will be considered.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

11. After the final determination is made, the association must provide written notice of the decision within 7 days.
12. The notice of final determination shall include specific citations to applicable association documents, law or regulations that led to the final determination.

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CIC Ombudsman Regulations Requirements for the Complaint Procedure

13. The final determination shall include the association's registration number and the name and license number of the manager.
14. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the CICB.

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CIC Ombudsman Regulations Requirements for Distribution of Complaint Procedure

1. The complaint procedure must be readily available to members of the association and citizens.
2. The complaint procedure must be distributed to members using the association's established reasonable, effective, and free method for communication with the association board of directors.
3. The complaint procedure must be included in the resale certificate or disclosure packet.
4. Associations will have to remind its members on an annual basis of the complaint process.

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Governing Documents/ Condominium Instruments

- The documents for the community must be reviewed to determine whether there are additional requirements for the complaint process.

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CIC Ombudsman Regulations Final Adverse Decision Process

- A complainant may give notice to the CIC Ombudsman of any final adverse decision.
- A final adverse decision is
“...the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted.”

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CIC Ombudsman Regulations Final Adverse Decision Process

- Notice must be filed by the complainant within 30 days of the final adverse decision.
- It must be in writing on forms provided by the CIC Ombudsman and shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee.
- The association will be given a copy of the written notice filed by the complainant.

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CIC Ombudsman Regulations Final Adverse Decision Process

- Decision is made by the Director of DPOR.
- If the Director determines that the association's decision is in conflict with the law or applicable regulations, the Director may advise the association and the complainant and provide the complainant and the association with information concerning such laws or regulations.

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CIC Ombudsman Regulations Final Adverse Decision Process

- Decision is within the sole discretion of the Director.
- Decision is final and not subject to further review.
- Decision is not binding upon the complainant or the association.

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Penalties for Failing to Have a Complaint Procedure

- CICB may issue orders to the association, file suit or assess monetary penalties not to exceed \$1,000 per violation.

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Complaint Procedure Action by Association

- Must be in place within 90 days of the CIC Ombudsman Regulations being adopted.
- Complaint procedure should include written policy and complaint form.
- Drafted by association's attorney.
- Association's board of directors will vote on adopting complaint procedure.

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