



## **Memorandum on Offices of Community Association Ombudsman**

**Prepared By:  
Community Associations Institute (CAI)  
Department of Government and Public Affairs  
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**Contact:**

**Dawn M. Bauman, CAE  
Senior vice president, Government Affairs  
Community Associations Institute (CAI)**

**[www.caionline.org](http://www.caionline.org)**

**[dbauman@caionline.org](mailto:dbaum@caionline.org) | 888-224-4321**

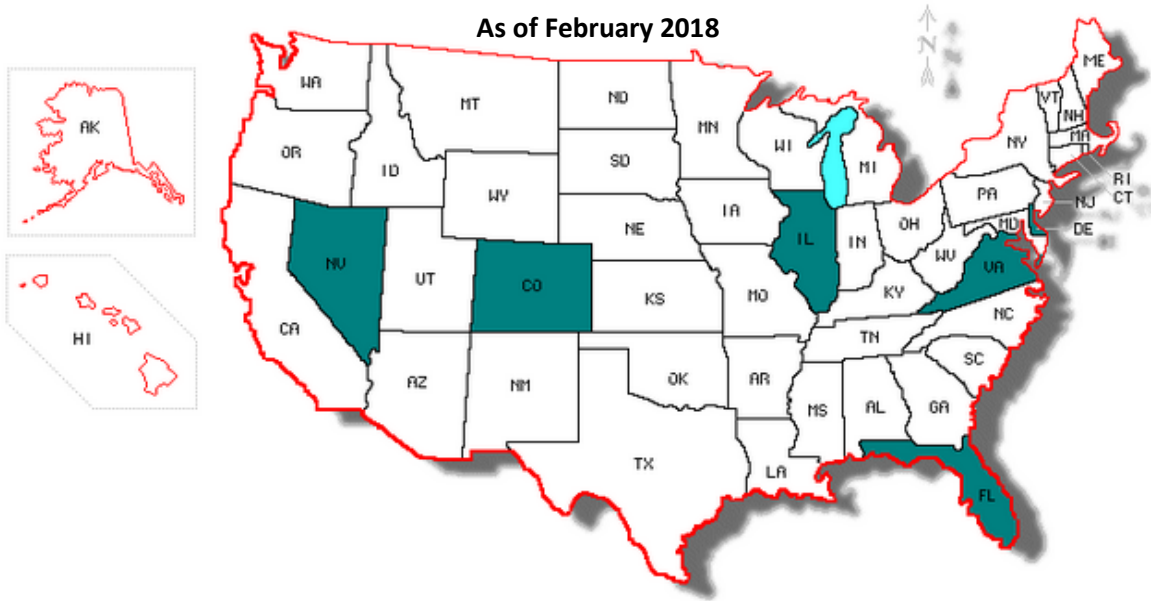
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## Map and List of Ombudsman Programs

As of February 2018



### States that have an Ombudsman Office or Similar Information Centers:

The following six states have or will have either an office of community association ombudsman or an HOA information center (shaded black): [Colorado](#), [Delaware](#), [Florida](#), [Illinois](#), [Nevada](#), and [Virginia](#).

#### Colorado

Shanneyvie Johnson  
HOA Information Officer  
1560 Broadway, Suite 925,  
Denver, CO 80202  
303-894-2518  
[shanneyvie.johnson@state.co.us](mailto:shanneyvie.johnson@state.co.us)

#### Florida

Bruce A. Campbell  
Condominium Ombudsman  
2601 Blair Stone Road  
Tallahassee, FL 32399  
Phone: (850) 922-7671  
[Ombudsman@dbpr.state.fl.us](mailto:Ombudsman@dbpr.state.fl.us)

#### Nevada

Charvez Foger  
Ombudsman  
2501 East Sahara Avenue, Suite 325  
Las Vegas, NV 89104  
(702) 486-4480  
[cicombudsman@red.state.nv.us](mailto:cicombudsman@red.state.nv.us)

#### Delaware

Christopher Curtin  
CIC Ombudsman  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8943  
[Christopher.Curtin@state.de.us](mailto:Christopher.Curtin@state.de.us)

#### Illinois

Adrienne Levatino  
CCIC Ombudsperson  
100 West Randolph, 9th Floor  
Chicago, IL 60601  
(844) 856-5193  
[FPR.CCICO@illinois.gov](mailto:FPR.CCICO@illinois.gov)

#### Virginia

Heather S. Gillespie  
Ombudsman  
9960 Mayland Drive, Suite 400  
Richmond, VA 23233  
(804) 367-2941  
[CICombudsman@dpor.virginia.gov](mailto:CICombudsman@dpor.virginia.gov)

## **CAI's Position and Concerns**

To date, existing ombudsman programs have, at best, a mixed record in support of homeowners living in community associations. Such offices face several obstacles in meeting its statutory objectives. Among these obstacles are structural issues, the lack of mutuality in the ombudsman process, added cost/complexity for homeowner dispute resolution, lack of education of boards and homeowners, the lack of need for such programs and more effective alternatives to expanding state control over locally elected community association boards.

First, disputes between a homeowner and an elected community association board are disputes of private contract. State agencies typically do not have authority to intervene in such private disputes. As such, many ombudsman offices can offer little in terms of recourse to parties complaining about their community association, and merely become the repository of negative stories about community associations.

To date, no ombudsman program provides a fair and balanced process to adjudicate community association disputes. Most often it serves to create a process by which a homeowner may file a complaint against the elected board, but does not provide the ability for the board to file a complaint against a homeowner. As often as not, many association complaints result from uncooperative homeowners who choose to ignore the community rules they agreed to abide by when they moved into the community. Their actions have a negative impact on most residents in the community who benefit from the rules and policies adopted by the membership or board; elected boards too should have the ability to use an ombudsman program to enforce community rules. As such, data gathered by such programs are unfairly biased against community associations as they only are empowered to represent one side in any dispute. As noted by the Nevada Office of the Ombudsman for Owners in Common-Interest Communities, most complaints filed with the ombudsman's office were unsubstantiated.

Establishing a state ombudsman office also adds complexity to dispute resolution within a community. Homeowners associations are democratically elected governing bodies who are responsible to residents of their community. The adoption of a state ombudsman program moves the center of gravity for dispute resolution from the community, to a state level office. Such a move typically adds complexity and expense to the dispute resolution process. CAI believes the focus should be on empowering individuals to solve problems within communities rather than to place the burden on the state. Mandating a state-commissioned office to investigate complaints is essentially outsourcing the administrative and democratic process of community associations over issues that are easily resolved through a process listed in an association's governing documents. This type of outsourcing of having state employees sorting out disputes relating to private contractual agreements between association boards and unit owners is not an efficient use of resources.

Homeownership in a community association requires an understanding of a homeowner's rights and responsibilities to the community. Residents in a community association enjoy a range of amenities and rules that serve to protect and enhance the value of their property. However, these benefits come with responsibilities for each resident such as payment of mandatory assessments, adherence to rules and the

ability of the association to enforce those rules. In most cases, disputes between homeowners and their associations arise from a lack of understanding of these rules and responsibilities. Adopting a policy of mandatory disclosure prior to purchase in a community association helps ensure that those buying into a community association are provided with an opportunity to understand the requirements of community association living and the responsibilities it imposes on them prior to moving in.

Finally, the notion that association problems are wide spread is not supported by national surveys. CAI conducted national surveys over the course of several years on homeowner satisfaction in community associations.<sup>1</sup> The findings on owner satisfaction with their community associations have been remarkably consistent, with close to 9 of 10 residents expressing positive views of their association in 2005, 2007, 2009 and 2012. Residents are consistently satisfied with the actions of their elected boards, with 88 percent of residents surveyed reporting that the board absolutely or ‘for the most part’ serves the best interest of their community. This empirical and longitudinal data demonstrates that community association boards serve the needs of their residents and that most cases of complaints, as supported by the findings of the Nevada office as well<sup>2</sup>, are unfounded.

CAI does not dismiss the fact that there are homeowners in community associations who have difficulty with their association and could benefit from mechanisms to assist in dispute resolution. CAI does believe that there are more appropriate alternatives that serve to empower residents and associations rather than expanding state government powers. CAI believes that these mechanisms work to provide greater transparency and clear processes to assist with dispute resolution in community associations.

First, CAI supports requirements that community association boards adopt an internal dispute resolution process if state law does not already impose such a requirement. Having a clear process helps manage the expectations of the board and the residents in managing and working through problems. CAI also supports the ability of the community association to adopt bylaws or amendments to their governing documents to mandate alternative dispute resolution (ADR) prior to litigation. ADR allows for a neutral entity to assist the parties in finding a resolution to a dispute outside of court and often at a lower cost to the parties. In fact, many jurisdictions offer affordable community resolution services. CAI also supports mandated disclosures to purchasers in community association prior to closing. CAI believes that all buyers in a community association should be provided with the opportunity to understand their rights and obligations prior to moving into a community association. Finally, in many states, the laws that govern community associations are outdated and do not adequately address the rights and responsibilities of homeowners, boards, developers and other key parties in community associations. CAI supports the adoption of the Uniform Common Interest Ownership Act (UCIOA) for states currently operating under older legal frameworks for community associations.

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<sup>1</sup> [What do Americans Say About Their Community Associations?, Community Associations Institute w/Zogby International, 2012.](#)

<sup>2</sup> See Nevada, Page 17.

In light of our concerns and the availability of less intrusive remedies for dispute resolution in community associations, CAI is skeptical and inclined not to support the imposition of ombudsman offices at the state level.

## Existing Programs

Versions of the office are in effect in six states – Colorado, Delaware, Florida, Illinois, Nevada and Virginia. The following section contains the duties of each state’s office, including how the offices are staffed and funded.

### *Comparison of Function and Duties<sup>3</sup>*

Function or Duty	Colorado	Delaware <sup>4</sup>	Florida	Illinois <sup>5</sup>	Nevada	Virginia
Accepts Complaints	Yes	Limited	Yes	Limited	Yes	Limited
Investigates/Verifies Complaints	No	Yes	Limited	No	Yes	Yes
Resolves Complaints	No	Limited	Yes	Limited	Yes	Limited
In-house Mediation	No	Yes	Yes	No	Yes	No
Mandates Mediation	No	No	No	No	Limited	No
ADR Referrals	Yes	Yes	Yes	No	Yes	Yes
Administrative Hearing	No	No	Yes	No	Yes	Yes
Monitor Election Procedures Disputes	No	Yes	Yes	No	Yes	Yes
Reports Alleged Election Misconduct	Yes	Yes	Yes	No	Yes	No
Appoints Election Monitors	No	Yes	Yes	No	Yes	No
Per Unit Fee	No	No	Yes	No	Yes	No
Oversight Over Declarant Boards	No	No	Yes	No	Yes	Yes
Protect ... from Threats, Defamation	No	No	No	No	Yes	No

<sup>3</sup> [Colorado Division of Real Estate, 2013 Study of Comparable HOA Information and Resource Centers](#)

<sup>4</sup> [Delaware Common Interest Community Ombudsman Act, January 2015](#)

<sup>5</sup> [Illinois Condominium and Common Interest Community Ombudsperson Act, December 2014](#)

## ***Colorado***

The HOA Information Office does not have regulatory or investigative power. The office tracks inquiries and complaints and is to report annually to the director of the Division of Real Estate. The office also acts as clearinghouse for information concerning the basic rights and duties of homeowners, declarants, and HOAs under the state’s Common Interest Ownership Act. Complaints are logged and issues are tracked and are reported in an annual report. Depending on the nature of the complaint, the office may contact complainants to discuss their rights and responsibilities, but it will not contact an HOA or management company.<sup>6</sup>

The operating expenses of the office are paid from the HOA Information and Resource Center Cash Fund, which was created in the state treasury. The fund consists of annual registration fees paid by HOAs, and in its initial fiscal period was appropriated \$205,828 to implement the office. These fees are in addition to the annual Secretary of State Registration. Under statute, the fees are limited to \$50; however, associations who collect under \$5,000 in assessments (both annually and through special assessments) are exempt from the fee but not from registration. Associations were required to pay an \$8 fee when registering in 2011. That fee increased and now stands at \$16 in 2013.

The HOA Information Officer is appointed by the executive director of the Department of Regulatory Agencies. When conducting the search for an appointee, the executive director is to place a high premium on candidates that are balanced, independent, unbiased and without any financial ties to an HOA or an HOA management service. The officer is required to be familiar with the state’s Common Interest Ownership Act. The officer may not, within the past ten years, have been licensed or registered with the Division of Real Estate, or hold stocks, bonds, or any financial interest in a corporation regulated by the Division. The officer is granted the authority to employ one or more assistants with a maximum of one full time equivalent.<sup>7</sup>

## ***Delaware***

The General Assembly created the Office of the Ombudsperson for the Common Interest Community in the Department of Justice in August 2014. The purpose of the Office is to assist members of residential “common interest communities” to understand their rights and responsibilities and where possible, to resolve disputes without use of the judicial system. The Ombudsperson has the following powers and duties:

- Assist members of the Common Interest Community to understand their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their particular common interest community. However, the Office of the Ombudsperson cannot provide legal advice, or legal interpretation. The Office can only

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<sup>6</sup> [HOA Information Office and Resource Center](#)

<sup>7</sup> [2010 Colorado House Bill 1278](#)

provide general, nonbinding explanations of laws, and the types of documents and regulations that govern common interest communities. The Ombudsperson may not act as an attorney in a legal action brought by you or any other person.

- Prepare, publish and make available on request, educational and reference material about common interest communities, in print and on the Ombudsperson’s website.
- Organize and conduct educational meetings for community members about their rights and responsibilities, and the processes available to them, according to the law, regulations and documents governing their community.
- Provide a template of reasonable procedures for community associations to use internally to resolve complaints with unit owners and other interested parties.
- Review the denial of a complaint that was first submitted to an internal dispute resolution process. The Ombudsperson will review a complaint: to determine compliance with law; for investigation in an appropriate case; and if appropriate, offer meetings, conciliation, mediation or other forms of alternative dispute resolution.
- Investigate and refer meritorious allegations of violations of existing law to other sections of the Attorney General’s Office or another appropriate law enforcement agency.
- Provide alternative dispute resolution (ADR) such as meetings or conciliation, mediation, or arbitration, to members of the common interest community before or after first using the informal complaint procedure. ADR can proceed only with the consent of all parties. There is a \$35 filing fee that must be submitted
- Develop and publicize procedures intended to result in fair elections of members and officers of Community Associations.
- Provide election services such as election monitors and vote counting (fee required).<sup>8</sup>

Currently the office is funded through an appropriation to the Office of the Attorney General. The 2015 budget appropriated one full time employee Deputy Attorney General to lead the office.<sup>9</sup> The fiscal note under the Act approximates at least \$89,300 for the Ombudsman, or up to a total of \$242,100 if three additional staff are appropriated.<sup>10</sup> There is a \$35 filing fee that must be submitted when a party seeks alternative dispute resolutions or election monitoring.<sup>11</sup>

## ***Florida***

The state’s Office of Condominium Ombudsman has the mission to improve the quality of life for Florida condominium owners through prompt, professional and courteous service as a neutral, informative and

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<sup>8</sup> [Delaware Common Interest Community Ombudsman, Services Available Through the Office of The Ombudsperson](#)

<sup>9</sup> [Delaware 2015 HB 225, Budget Bill](#)

<sup>10</sup> [Delaware 2014 HB 308, Fiscal Note](#)

<sup>11</sup> [Delaware Common Interest Community Complaint Form](#)



accessible resource.<sup>12</sup> The office is limited to matters involving condominium associations. The office is granted several more powers and duties than the information center in Colorado; the office's duties include issuing reports and recommendations for legislation and procedures; serving as a liaison between the state, associations, boards and unit owners; helping parties understand their rights and responsibilities; coordinating reference material; and monitoring and reviewing disputes. Specifically, the ombudsman duties are as follows:

- Prepare and issue reports and recommendations to the Governor; the Department of Business and Professional Regulation; the Division of Florida Condominiums, Timeshares, and Mobile Homes, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within its jurisdiction, and make recommendations for legislation.
- Act as liaison between the division, unit owners, boards of directors, board members, community association managers and other affected parties. Additionally the ombudsman is to develop policies and procedures to assist unit owners, boards of directors, board members, community association managers and other affected parties to understand their rights and responsibilities and the condominium documents governing their respective association. The ombudsman is to coordinate and assist in the preparation and adoption of educational and reference material, and endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.
- Monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.
- Make recommendations to the division for changes in rules and procedures for the filing, investigation and resolution of complaints filed by unit owners, associations and managers.
- Provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties, division rules, and the condominium documents governing the association.
- Encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy.

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<sup>12</sup> [Florida Office of the Condominium Ombudsman](#)

- Appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors when 15 percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, petition the ombudsman to do so.<sup>13</sup>

The office is funded by an annual fee of \$4 per condominium unit and \$4 per mobile home lot, as well as a \$2 timeshare fee per seven-day period. There is a \$50 filing fee when a party files for arbitration.

The ombudsman is appointed by the governor and must be an attorney. The ombudsman or an employee of the office may not engage in any other business or profession; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office.<sup>14</sup> The office was statutorily required to be established and maintained in Tallahassee; however, a second office was also established in Ft. Lauderdale.

## ***Illinois***

The mission of the CCIC Ombudsperson is to provide information to unit owners, condominium and common interest community associations and their respective boards in order that they all may better understand their rights and obligations under the Condominium Property Act and the Common Interest Community Association Act. Specifically, the ombudsperson:

- Educates unit owners, associations and boards.
- Publishes information useful to unit owners, associations and boards.
- Respond to relevant inquiries by providing educational materials and directing citizens to relevant resources.

The ombudsperson does not:

- Provide legal advice or advocacy services.
- Enforce laws or regulations.
- Hear, mediate or resolve disputes.<sup>15</sup>

## ***Nevada***

The Office of the Ombudsman for Owners in Common-Interest Communities and, and added in 2007, Condominium Hotels was created to assist homeowners and board members to better understand their

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<sup>13</sup> [Florida Statute 718.5012](#)

<sup>14</sup> [Florida Statute 718.5011](#)

<sup>15</sup> [Illinois Condominium & Common Interest Community Ombudsperson. IDFP.](#)

rights and obligations under the law and their governing documents and compile an informational database about registered associations. Specifically, the duties of the office are as follows:

- Assist in processing claims submitted to mediation or arbitration;
- Assist owners in common-interest communities to understand their rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities;
- Assist persons appointed or elected to serve on executive boards of associations to carry out their duties; and
- Compile and maintain a registration of each association organized within the state which includes, without limitation:
  - The name, address and telephone number of the association;
  - The name of the person engaged in property management for the common-interest community or the name of the person who manages the property at the site of the common-interest community;
  - The names, mailing addresses and telephone numbers of the members of the executive board of the association;
  - The name of the declarant;
  - The number of units in the common-interest community; and
  - The total annual assessment made by the association.

Pursuant to a 2008 formal opinion of the Attorney General’s Office, the Commission for Common-Interest Communities does not have jurisdiction to investigate the interpretation, application and/or enforcement of governing document disputes nor does the Commission and its Administrative Law Judges (ALJs) have jurisdiction to hear or decide governing document disputes.<sup>16</sup>

The office is funded through the Account for Common-Interest Communities and Condominium Hotels, which receives its monies through an annual per-unit assessment of up to \$3. Interest and income earned on the money in the account, after deducting any applicable charges, must be credited to the account. The fund is used solely to defray the costs and expenses of administering the office, and if authorized the Real Estate Division may use a portion of the fees collected to support the office to pay the fees for a mediator or arbitrator to resolve disputes involving common-interest communities. There is a \$50 filing fee when a party submits a claim for the mediation or arbitration program. Mediators may charge up to \$167 per hour, not to exceed \$500 for three-hour mediation. The parties to the mediation may agree to extend the mediation at a cost of \$200 for each hour. Arbitrators may not bill more than \$300 per hour; however, there is no maximum number of allowable hours.<sup>17</sup>

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<sup>16</sup> [Attorney General's Opinion Regarding the Commission's Jurisdiction Over Common-Interest Communities' & Condominium Hotels' Governing Documents, 2008.](#)

<sup>17</sup> [Nevada ADR Form 523](#)

The ombudsman is appointed by the Real Estate Division administrator and is statutorily required to be qualified by training and experience to perform the duties and functions of the office.<sup>18</sup> The office is staffed by 17 full-time positions and seven commissioners. The office has a legislatively-approved 2011-2013 budget of \$7,051,969 which is down from the 2009-2011 budget of nearly \$8,685,291.<sup>19</sup>

## ***Virginia***

The General Assembly established the Office of Common Interest Community Ombudsman within the Department of Professional and Occupational Regulation in 2008, which replaced services offered by the Common Interest Community Liaison. Among other things, the ombudsman is responsible for helping common interest association members in understanding their rights and the processes available under the declaration and bylaws of the community association, maintain data on inquiries and complaints received, and if requested, be responsible for providing an assessment of proposed and existing laws. Statutorily the office has authority to do the following:

- Assist members in understanding their rights and the processes available to them according to the declaration and bylaws of the association;
- Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
- Provide to members and other citizens information concerning common interest communities upon request;
- Make available, either separately or through an existing Internet website utilized by the director, information concerning common interest communities and such additional information as may be deemed appropriate;
- Receive the notices of complaint filed;
- In conjunction with complaint and inquiry data maintained by the director, maintain data on inquiries received, the types of assistance requested, notices of complaint received, any actions taken, and the disposition of each such matter;
- Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the board, and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request;
- Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the

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<sup>18</sup> [Nevada Revised Statutes Chapter 116](#)

<sup>19</sup> [Nevada Open Government, Budget Expenditure Summary, Common Interest Communities.](#)

representatives of the Office of the Common Interest Community Ombudsman to the inquiries;

- Upon request to the director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
- Monitor changes in federal and state laws relating to common interest communities;
- Provide information to the director that will permit the director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The director’s report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
- Carry out activities as the board determines to be appropriate.<sup>20</sup>

The Common Interest Community Ombudsman Regulations—which required associations to create an internal complaint procedure and guide the work of the office—became effective July 1, 2012. As a result, the focus of the office transitioned from reviewing complaints to determining outcomes of “final adverse decisions,” as required under Section 55-530 of the Code of Virginia. Notices of Final Adverse Decision, as described in Section 55-530 and the new regulations, are obtained after an association member or owner submits a complaint to its association, through the newly required internal complaint procedure, alleging a violation of common interest community law or regulation (not association governing documents). Upon receipt of such a complaint, every association board must provide a final decision to the complainant, and if that final decision is adverse to whatever action or outcome the complainant sought, the complainant may then submit a Notice of Final Adverse Decision to the office for review. The notice must be submitted along with the statutorily mandated \$25 fee or a fee waiver request.<sup>21</sup>

The office is funded by the Common Interest Community Management Information Fund. The revenue sources for this management fund include: the annual filing fees for associations and annual assessment fees and licensing fees for association managers. The annual filing fees for associations range on the number of lots or units within it; for example, associations with 1-50 units have an application fee of \$45 and a renewal fee of \$30, and associations with over 5001 lots or units have an application fee of \$180 and a renewal fee of \$170.<sup>22</sup> Community association managers are required to pay a \$100 registration fee. Additionally, managers are required to annually pay an assessment fee, which is calculated by the

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<sup>20</sup> [Virginia Revised Statutes Section 55-530, 2008 Chapter 851.](#)

<sup>21</sup> [Office of the Common Interest Community Ombudsman, Report to the House Committee on General Laws and Technology Housing Commission, Annual Report 2011-2012.](#)

<sup>22</sup> [Virginia Common Interest Community Management Information Fund Regulations.](#)

managing firm's gross receipts multiplied by 0.0005, with a minimum of \$10 and a maximum of \$1000.<sup>23</sup> The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the ombudsman, are paid first from interest earned on deposits in the management fund and the balance from the money collected annually in the fund.<sup>24</sup>

The office is staffed by an ombudsman and a complaint analyst position, and is located in the Compliance and Investigations Division, of the Department of Professional and Occupational Regulation. The ombudsman is appointed by the director of the department.

## **Efficacy of Programs**

The efficacy of ombudsman programs may be measured by the reports statutorily required of the offices. We can see the progression of the programs in the states. Below is a section dedicated to the kind of complaints each office receives, and, if available, the amount of complaints that are filed, reviewed and completed. To date, the Delaware and Illinois programs are too new to understand their impact.

### ***Colorado***

The HOA Information and Resource Center is statutorily directed to collect information by registrations and from inquiries and complaints filed by homeowners. The office provides assistance and information to homeowners, HOA boards, declarants and other interested parties concerning their rights and responsibilities pursuant to the Colorado Common Interest Ownership Act (CCIOA).

During the program's infancy, Aaron Acker, former HOA Information Officer, stated that many matters handled by the office pertain to transparency. Specifically, the office receives complaints from unit owners regarding the transparency of records, particularly the ability to access financial records; governance, and the ability of residents to have a say in how the association is governed; and elections, especially notice of nominating and voting events. Mr. Acker stated the HOA Information Office is successful and has received good feedback from helping residents understand their association's covenants and explaining residents' rights.

According to the 2012 Annual Report of the HOA Information and Resource Center, the office addressed approximately 2,873 inquiries. Most of the inquiries to and assistance from the office pertained to the following:

- The general operation of an HOA, such as assessments, accounting, insurance, budgets, and reserves;
- Board of directors responsibilities, such as election, voting and proxy issues;
- Enforcement capabilities of an HOA, including fees, costs, fines, lines, foreclosure and receiverships;

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<sup>23</sup> [Virginia Common Interest Community Manager Application.](#)

<sup>24</sup> [2008 Virginia House Bill 516, Fiscal Note.](#)

- Declarant issues such as disclosure of documents, following or adhering to CC&Rs and termination of control;
- Maintenance and upkeep of the community;
- Disclosure of HOA records to owners;
- Concerns over manager/management company and vendors; and
- The HOA registration process.

In regards to complaints, the office received 576 complaints from 309 different homeowners and residents in 2012. The majority of the complaints received pertained to following governing documents, performing maintenance, general allegations of mismanagement and transparency, homeowner communications, production of HOA records, and accounting issues. Of the complaints received, 73 percent were directed toward the HOA and board, and 27 percent at managers. The office notes its particular concern is the serious nature of many of the complaints received and the inability of homeowners to resolve their issues without resorting to legal channels. At this time the office only collects data and reports it to the Director of the Division of Real Estate, and does not have investigatory or enforcement powers.<sup>25</sup>

In 2013 the Division of Real Estate, pursuant to statute, studied the functions and duties of the ombudsman offices in Florida, Nevada and Virginia. The division prepared a list of recommendations and analysis for the legislature to consider. When considering future compliance programs for HOAs, the division's first objective is the successful implementation of the manager licensing program. The report concluded that waiting until manager licensing is underway will give the Division an opportunity to plan for any broader enforcement of the CCIOA, as well as analyze potentially cost-reducing overlaps between manager licensing and possible HOA compliance programs.<sup>26</sup>

## ***Florida***

In 2008, the office reportedly logged 16,000 phone calls.<sup>27</sup> During Fiscal Year 2010-11 the Office of the Condominium Ombudsman with 7 full-time positions accomplished the following: approximately 52,000 contacts made or received to and from staff, customers and outside entities by telephone, fax, regular mail, e-mail and walk-ins; processed 84 petitions for appointment of an election monitor and appointed a monitor in 71 instances; attended and spoke at 67 meetings, seminars, educational classes, or tradeshow, and provided instruction to approximately 4,391 persons throughout the state.

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<sup>25</sup> [2012 Annual Report of the HOA Information and Resource Center](#)

<sup>26</sup> [Colorado Division of Real Estate, 2013 Study of Comparable HOA Information and Resource Centers, hosted on caionline.org.](#)

<sup>27</sup> [Monica Thatcher, Florida lawmakers tap condo fund as owners' complaints rise, The Miami Herald. May 27, 2009.](#)

August 1, 2013, marked the anniversary of the Office's implementation of an electronic database to collect and analyze information from calls and correspondence received. The office is estimated to have received 8-9,000 cases and over 20,000 phone calls over that one-year mark. The office received a high percentage of questions regarding the cause, repair, and prevention of household leaks.

While the office receives phone calls from owners and board members in HOAs, timeshares and cooperatives, its powers and duties are limited to condominiums. The legislature is working to address this looking forward to determine whether the ombudsman should have its duties expanded to cover HOAs, or whether the housing model should have its own office.<sup>28</sup>

## ***Nevada***

In 2008, David Garrick, an investigator for the Nevada Office of the Ombudsman for Owners in Common-Interest Communities, stated that many of the matters handled by the office deal with money, specifically, complaints about fines or assessments. Residents regularly lodge complaints alleging injustices stemming from a board's failure to punish a violation of the governing documents or enforce the governing documents uniformly.<sup>29</sup>

Pursuant to a 2008 formal opinion of the Attorney General's Office, the Commission for Common-Interest Communities does not have jurisdiction to investigate the interpretation, application and/or enforcement of governing document disputes nor does the Commission and its Administrative Law Judges (ALJs) have jurisdiction to hear or decide governing document disputes.<sup>30</sup>

More recently, the office has published executive summaries and reports on the efficacy of its alternative dispute resolution (ADR) and intervention programs. During its July 1, 2010, through June 30, 2011, reporting period, the office reported opening 97 ADR claims and closing 97 ADR claims, with 44 claims having been issued certificates of completion. The top reason for the ADR claims were, in the order provided, the following: maintenance of landscape and property; delinquent assessments; collection of fees improperly; homes placed in foreclosure improperly; and fines.<sup>31</sup> According to its executive summary on intervention for the same time period as above, the office reportedly opened 195 cases, closed 182,

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<sup>28</sup> Rick Luther, State of Florida, Office of the Condominium Ombudsman.

<sup>29</sup> [Meghan Reilly, Connecticut OLR Research Report, Condominium Ombudsman, October 9, 2009.](#)

<sup>30</sup> [Attorney General's Opinion Regarding the Commission's Jurisdiction Over Common-Interest Communities' & Condominium Hotels' Governing Documents, 2008.](#)

<sup>31</sup> [FY 2011 Executive Summary of the Alternative Dispute Resolution Program, Nevada Ombudsman's Office for Owners in Common-Interest Communities and Condominium Hotels.](#)



and had 121 cases carried forward. The report found the vast majority of the claims were unsubstantiated allegations.<sup>32</sup>

## ***Virginia***

During its 2008 initial reporting period, the Office of Common Interest Community Ombudsman received or placed 222 telephone calls and more than 300 emails. In addition, the office received 77 requests for assistance requiring staff review – 38 concerning property owners’ associations, 18 concerning condominium associations, and 21 concerning timeshare associations. The office resolved or closed 17 of these inquiries, and analysis – including review of documents (i.e. declarations, bylaws, etc.) – was completed for 83 percent of the remaining inquiries.

The majority of inquires related to association management or governance, including issues such as meeting notices, financial management, board member resignations, and general board communications and leadership. Several inquiries from association members also expressed interest in disbanding due to statutory requirements and general acrimony among members and their boards.<sup>33</sup>

During the 2009-10 reporting period, the office received 1,551 telephone calls and 1,129 e-mails. These phone calls and emails were primarily requests for information or questions related to common interest communities.

In addition, the office received 276 complaints during the 2009-10 reporting period. The office resolved or closed 271 complaints, which included resolution or closure of complaints received during the prior reporting period. In accordance with departmental procedures for complaint processing, the Common Interest Community Board (CICB) considered cases stemming from investigations, with 11 complaints under investigation at the time the report was issued. The majority (53 percent) of condominium and property owners’ association complaints related to actions by the association board, including lack of notice for meetings, questionable election processes, lack of responsiveness, and inappropriate use of power by the board. 16 percent of the complaints were related to developer control, most typically as a result of the unwillingness (or perceived unwillingness) to relinquish control of the association to owners.

The office’s 2009-10 statutorily required report to the Department of Professional Regulation also contained a section regarding constituent expectations. The following is an excerpt from that report:

After two years of full functioning, a major issue of constituent expectations continues to challenge the ability of the office and the ombudsman to provide the level of service and information demanded by stakeholders (including association members, unit owners, and legislators).

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<sup>32</sup> [FY 2011 Executive Summary of Ombudsman Intervention, Nevada Ombudsman’s Office for Owners in Common-Interest Communities and Condominium Hotels.](#)

<sup>33</sup> [2008 Report on the Office of the Common Interest Community Ombudsman.](#)

At issue is the public's understanding of the duties performed by the office, based on Sections 55-530(C) (1) and (7), which reference the bylaws and declaration of an association. These code sections lead members and unit owners to believe the ombudsman is able to interpret their governing documents. However, such service—the interpretation of legal documents—is typically reserved only to an attorney actively representing a client. In order to clarify this issue, which constituents have raised on innumerable occasions, the ombudsman—an attorney, as required by the enabling CIC statutes—contacted the Virginia State Bar regarding the potential conflict in providing an interpretation of association governing documents. Based on a lengthy conversation with an ethics professional at the Bar, it does appear that providing such information to a member or unit owner would, in fact, constitute an ethics violation.

In addition, Section 55-530(C) (7) states that the ombudsman will provide nonbinding explanations of laws and regulations governing common interest communities. Unfortunately, the vast majority of the public contacting the office assumes an explanation is identical to an interpretation. Therefore, constituents expect the ombudsman to provide legal interpretations not only of their governing documents, but also of common interest community statutes. The difficulty with the public's misperception—which is understandable, based on the statutory language establishing the office—is that it leaves constituents with the impression that the office is not fully meeting its responsibilities and obligations. Although the office operates well within appropriate legal confines, and provides tremendous service to association members and unit owners on a daily basis, constituent expectations are frustrated because the ombudsman cannot provide an interpretation of the law or governing documents. The goal of the office, and its statutory responsibility, is to educate the public, to provide direction to available common interest community resources, to review final adverse decisions, and to help members and unit owners in whatever other ways possible to help avert or resolve conflict. The office and the ombudsman cannot, however, replace the services of an attorney.<sup>34</sup>

During the 2011-12 reporting period, the Office received 1,613 telephone calls (a 30.9 percent increase over 2010-11) and 1,833 email messages (a 54.8 percent increase over 2010-11). The phone calls and emails primarily concerned requests for information or questions related to common interest communities and time-shares, as well as clarification and explanation of the new regulations. The office resolved or closed 345 complaints in 2011-12, which includes resolution or closure of some complaints received during the prior reporting period.

The office's 2011-12 report also contained a section regarding constituent expectations. The following is an excerpt from that report:

Previous reports noted confusion and dissatisfaction as a result of the public's misunderstanding of the duties performed by the Office. Statutory language led association members and unit

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<sup>34</sup> [2009-10 Report of the Office of the Ombudsman for Common Interest Communities.](#)

owners to believe the Ombudsman’s authority allowed for interpretation of governing documents when, in fact, the Ombudsman is not permitted to offer legal advice or interpretation.

In an effort to align constituent expectations more closely with the Office’s legal mandate, DPOR successfully sought legislation during the 2012 General Assembly Session to clarify the role of the Ombudsman by removing incorrect references to review of declarations, bylaws, or other association documents. The technical amendments should help the public better understand the nature of assistance the Office can provide, as well as its legal limitations.

During the 2011-12 reporting period, association constituencies also expressed frustration and angst in complying with the new regulatory requirement to prepare and adopt internal complaint procedures. However, the CICB provided notice to every registered association prior to the enactment of the new Ombudsman Regulations, and granted associations a 90-day grace period to meet their responsibilities under the new regulations.

While many associations are particularly nervous about the taxing nature of serial complainers on association resources, as time goes on, savvy associations will learn how best to handle these members and will come to recognize the internal complaint procedure can be an asset rather than a detriment. Associations will now be more fully aware of the areas of complaint by their members and owners, with a more complete understanding of owner perceptions as to what might be construed as violations of common interest community laws or regulations.<sup>35</sup>

At the June 2013 CICB meeting, the office reported to have received over 1,700 calls and 2,000 emails, approximately a 5 and 10 percent increase respectively from last reporting period. The office received 251 new complaints and closed 258. At the meeting, the office commented on the difficulty it was having with owners who submitted their complaints to the office prior to their association. The office also commented on its concern over the amount of annual reports it receives from associations that have not adopted a complaint procedure, which is required by state statute.

## **Unsuccessful Attempts**

A couple of states have attempted to create a community association ombudsman office within the last few years. California and Connecticut have a long standing history of doing so, but each piece of legislation has faced stakeholder opposition and budget restraints.

### ***California***

Since 2005 at least three measures have been introduced that sought to create an ombudsman office in California. During the 2005-06 legislative session, two bills were introduced that, if enacted, would have created an ombudsman pilot project within the Department of Consumer Affairs to provide education,

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<sup>35</sup> [Office of the Common Interest Community Ombudsman, Report to the House Committee on General Laws and Technology Housing Commission, Annual Report 2011-2012.](#)

informal dispute resolution and data collection on common interest developments. The assembly bill was the vehicle for the issue, which passed the legislature, but was vetoed by Governor Arnold Schwarzenegger (R) September 22, 2006. Governor Schwarzenegger cited the bill was unnecessary at the time, and recent legislation had been enacted to address various problems and it was necessary to gauge the effectiveness of the legislation before creating an entirely new state office. Additionally, the Governor cited the bill lacked clarification on the type of dispute resolution services that would be provided by the ombudsman, and it did not specify the difference between informal dispute resolution required by this bill and formal mediation, which the ombudsman would not provide.<sup>36</sup>

Another assembly bill was introduced in 2008 that sought to create a new Common Interest Development Bureau/Ombudsman Pilot Program. The bill's language was similar to that of the 2005-06 bills and provided the state would have levied an annual per-unit fee ranging from \$10 to \$20, for an estimated total of more than \$107 million over five years.<sup>37</sup> Like the previous session, the legislation passed the legislature but was vetoed by Governor Schwarzenegger.

Governor Schwarzenegger vetoed the measure stating:

*"...Creating another layer of government bureaucracy is costly and unnecessary. Numerous bills have been signed into law in the past few years to address the various problems cited by the author. There is little or no evidence that these measures have proven ineffective in addressing the current situation. Today, several other government agencies are handling issues raised with these associations. As such, I can see no reason to create an entirely new state entity at this time..."<sup>38</sup>*

## ***Connecticut***

The General Assembly had a consecutive history of considering an ombudsman's office; a bill has been introduced every session between 2008-11. The first measure, which was backed by the attorney general's office, the Connecticut Bar Association and, among others, the Senate majority whip, would have established an ombudsman's office to represent unit owners, and allow the ombudsman to investigate and resolve complaints and, if requested, monitor election of board members. The bill also required community association managers to be licensed and clarified certain animal control statutes with respect to property that is a part of common elements of a common interest community.<sup>39</sup> The bill eventually failed upon adjournment likely because of its broad spectrum; the cost of the ombudsman office, which was estimated at \$300,000 annually; and the anticipated significant increase in the workload of the Department of Consumer Protection, which would have required a Staff attorney/ombudsman, two

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<sup>36</sup> [2005 Assembly Bill 770 Veto Message, Governor Arnold Schwarzenegger.](#)

<sup>37</sup> [CAI 2008 Legislative Yearbook.](#)

<sup>38</sup> [2008 Assembly Bill 567 Veto Message, Governor Arnold Schwarzenegger.](#)

<sup>39</sup> [2008 Connecticut Senate Bill 706.](#)

consumer protection real estate examiners, and a consumer information representative and a paralegal specialist to staff the proposed office.<sup>40</sup>

In 2009, the Senate introduced a bill that was again backed by Attorney General Richard Blumenthal.<sup>41</sup> According to the attorney general's testimony, the bill would create a commission to review condominium unit owner complaints and complaints about violations of condominium bylaws and grant the authority to the ombudsman to review the disputes and, if necessary, hold a hearing and issue orders to resolve the problems. The proposal allowed the attorney general's office to impose civil action to enforce provisions of the condominium's bylaws and/or state statutes, and impose a civil penalty of not more than \$200 for any knowing violation. The costs of the commission would have been paid through an annual assessment on condominium associations in the state: \$50 for condominiums with less than 20 units; \$100 for condominiums with 20-100 units and \$200 for condominiums with over 100 units.<sup>42</sup> These costs were one of many complaints against the bill. Other complaints were the bill favored unit owners and thereby created an imbalance, as boards were not given the opportunity to file a grievance against an abusive unit owner. Additionally, all boards would be required to pay a fee to defend a grievance filed by a unit owner, and would likely incur additional expenses due to the likelihood of the need to hire legal counsel to defend against the grievance.<sup>43</sup>

Again in 2010, legislation was introduced to provide any unit owner or group of unit owners may file a request with the Office of Condominium Ombudsman to have the commissioner or the commissioner's designee review the complaint regarding alleged violations of any provision of the Condominium and Common Interest Ownership Acts. The office could also review a bylaw of a condominium association or common interest community association concerning the budget and appropriation of funds, as well as the calling and conduct of meetings and access to public records. The bill was tabled by the senate for the end of the legislative session.<sup>44</sup>

The General Assembly also proposed a bill in 2011, but that bill failed to receive a hearing and have official text drafted.

## History of the Ombudsman

The history of the ombudsman dates back to the late 1990s. Since that time six states created a form of an ombudsman; Nevada was the first state to create the office, followed by Florida and Virginia. Colorado has a homeowner's association information officer that serves a more limited role when compared to the

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<sup>40</sup> [2008 Fiscal Note for Senate Bill 706 \(File Copy 546\).](#)

<sup>41</sup> [2009 Connecticut Senate Bill 1119.](#)

<sup>42</sup> [Testimony of Attorney General Richard Blumenthal on Senate Bill 1119, March 19, 2009.](#)

<sup>43</sup> [CAI Testimony on Senate Bill 1119, Kim McClain, March 19, 2009.](#)

<sup>44</sup> [2010 CAI Legislative Yearbook.](#)

other states. Delaware's office was created by the General Assembly in August 2014. Illinois, enacted an office, but its law goes into effect in 2016 and lacks a funding mechanism.

The first office of a condominium ombudsman was created in Nevada during the 1997 legislative session through an omnibus bill seeking to regulate homeowners associations as a government-like entity as opposed to a private corporation.<sup>45</sup> There was a consensus from all professional organizations that homeowners associations needed improvement. Primarily the bill sought to reduce problems, confusion, lack of education and lack of remedies among association owners, board members and property managers.<sup>46</sup> While the bill's intent was sweeping, part of the original goal was to have the attorney general's office oversee at least one attorney, one auditor and one investigator in monitoring the practices of associations, review complaints, conduct investigations, provide information, approve courses of instruction and continuing education for members of executive boards, and to specify restrictions that apply to and must be included in the bylaws of each association.<sup>47</sup> However, in an attempt to eliminate the fiscal impact and make the bill more workable, the provision was amended by the attorney general's office to work with the Real Estate Division and Real Estate Commission in dealing with the issues of education of board members. As a result the amended and chaptered version contains the provision which created the ombudsman's office for owners in common-interest communities within the Real Estate Division of the Department of Business and Industry. The office is funded by fees levied on associations and has the responsibility to assist in processing claims submitted to mediation or arbitration; assist owners in common-interest communities to understand their rights, responsibilities and the governing documents of their associations; and assist persons appointed or elected to serve on executive boards of associations to carry out their duties.<sup>48</sup> The scope of the office was broadened in the 1999 session to require the office to compile an informational database about registered associations and authorized the ombudsman to request certain records from associations. The office was further authorized to request that the Common-Interest Community and Condominium Hotels Commission issue subpoenas for the attendance of witnesses and the production of books and records.<sup>49</sup>

The Florida Legislature approved its condominium ombudsman's office in 2004. During the interim prior to the 2004 legislative session, the Speaker of the Florida House of Representatives created the Select Committee on Condominium Association Governance. The charge of the committee was to take public testimony and review current laws regulating the governance of condominium associations to identify any improvements in those laws that might be recommended. The select committee was instructed to issue a report prior to the beginning of the 2004 session outlining any recommendations for legislation

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<sup>45</sup> [Sections 8 and 9, 1997 Nevada Senate Bill 314 as Enrolled, Senator Michael A. Schneider.](#)

<sup>46</sup> [Minutes of the Nevada Senate Committee on Commerce and Labor, May 1, 1997.](#)

<sup>47</sup> [Section 9, 1997 Nevada Senate Bill 314 as Introduced, Senator Michael A. Schneider.](#)

<sup>48</sup> [Sections 8 and 9, 1997 Nevada Senate Bill 314 as Enrolled, Senator Michael A. Schneider.](#)

<sup>49</sup> Creation of the Ombudsman Office, Nevada Real Estate Division. [http://www.state.nv.us/CIC/cic\\_ombuds.htm](http://www.state.nv.us/CIC/cic_ombuds.htm)

consistent with the committee's conclusions. The committee identified many issues affecting residents of common interest communities; one being there was no department that had the power to settle disputes between condominium owners and their respective associations, help monitor elections and meetings, and fine members. The committee's recommendation was to create the Office of the Condominium Ombudsman which would have the authority to make recommendations for legislation, act as liaison between parties to a dispute or complaint, recommend the initiation of enforcement proceedings, and make recommendations to the Division of Land Sales, Condominiums and Mobile Homes for addressing complaints.<sup>50</sup> An omnibus condominium association bill outlining the duties and administration of the ombudsman was drafted by the committee chair, was substituted by a senate bill, passed the legislature and finally went into effect October 1, 2004.<sup>51</sup> As of December 2015, Florida's office only oversees condominiums and lacks the specific power over homeowners associations; however, legislation has been introduced for the 2016 session to provide divisional authority of homeowners associations to a renamed Division of Florida Condominiums, Timeshares, and Mobile Homes, the Division of Florida Condominiums, Homeowners' Associations, Timeshares, and Mobile Homes.<sup>52</sup>

Prior to the creation of the Virginia Office of the Common Interest Community Ombudsman in 2008, the Common Interest Community Liaison served as an information resource on issues relating to the governance, administration and operation of condominiums and homeowners associations located in the state. On the recommendation of a Housing Study Commission, a bill was introduced that required the Real Estate Board to create a condominium ombudsman. However, the legislation was amended in its house of origin. As a result the Common Interest Community Liaison was established by the General Assembly in 2001 to give interpretations of the Property Owner's Association Act, the Condominium Act and the Condominium Rules and Regulations. The liaison's duties also included processing association annual reports, identifying associations to be registered and referring parties to public and private agencies providing alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members.<sup>53</sup> In 2008, the General Assembly passed a measure which created the Common Interest Community Board and required the Department of Professional and Occupational Regulation to create the Office of the Condominium Ombudsman. The office was given functions similar to Florida and Nevada.<sup>54</sup>

As a result of legislation passed in 2010, Colorado has an information officer that serves in a similar fashion as did the Virginia liaison. Like Virginia, the General Assembly originally sought to create an ombudsman's office. The introduced version of the bill required the ombudsman to advocate for the rights of unit

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<sup>50</sup> [Florida House Committee on Business Regulation Staff Analysis, 2004 House Bill 1223.](#)

<sup>51</sup> [2004 Florida Senate Bill 1184 as Enrolled, Senate Judiciary Committee.](#)

<sup>52</sup> [2016 Florida House Bill 653.](#)

<sup>53</sup> [2001 Virginia House Bill 2429 Fiscal Impact Statement, Department of Planning and Budget.](#)

<sup>54</sup> [Virginia Revised Statutes Section 55-530, 2008 Chapter 851.](#)

owners in the governance of unit owners' associations, offer to mediate disputes, act as a clearinghouse for information, and report suspected violations of rules. However, the legislation was amended several times to strip the position of its advocacy provisions and the "ombudsman" title. Upon passage, the bill provided for an HOA Information Officer to act as a clearing house for information concerning basic rights and duties of unit owners, declarants and unit owners' associations, and granted the officer the ability to track inquiries and complaints concerning homeowners associations.<sup>55</sup> The bill's provisions went into effect January 1, 2011.

In 2014, Delaware and Illinois passed legislation creating a Common Interest Community Ombudsman. Less than a year following the enactment of Delaware's office, the Ombudsman and the office's appointed Advisory Council have met to discuss the study of and advice on statutorily requirement subjects, such as the following: mechanisms to increase collection rate for assessments; the development of conflict resolution procedures within communities; the feasibility of mandatory mediation, arbitration or other ADR for disputes not resolved within communities; the development of mechanisms for registration of common interest communities with the state or political subdivisions; and the study and recommendation of adoption, amendment or rescission of law or rules to improve the operation of common interest communities.<sup>56</sup>

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<sup>55</sup> [Colorado House Committee of Business Affairs and Labor Report, March 3, 2010, House Bill 1278.](#)

<sup>56</sup> Delaware Common Interest Community Advisory Council Agenda, June 3, 2015.