Implementing a Complaint Procedure

by

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September, 2012
What is a Complaint Procedure?

- The written process adopted by an association to receive and consider association complaints from members and citizens.
History of the Complaint Procedure

- 2008 - Virginia General Assembly passed a law requiring the Common Interest Community Board (CICB) to establish regulations requiring associations to establish a reasonable procedure to resolve complaints from members and citizens.

- 2012 – CIC Ombudsman Regulations approved. Regulations include specific requirements that must be included in the complaint procedure.
What is a Complaint?

- "Association complaint" is the written complaint filed by a member of the association or citizen pursuant to an association complaint procedure.
- Complaints are limited to those matters alleging a violation of a state law or regulation governing community associations by the association or the manager.
- Complaints regarding decisions made by an association based on the governing documents/condominium instruments are not covered.
Compliance with Implementing a Complaint Procedure

- **Who must comply?**
  - Applies to all cooperative, condominium and property owners associations.

- **When?**
  - Associations must implement Complaint Procedure by **September 29, 2012**.

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What’s included in a Complaint Procedure?

- Va. Code and Ombudsman Regulations require certain specific items to be included in the complaint procedure or on the complaint form.

- Complaint procedure and form must be compliant with governing documents for association.
What’s included in a Complaint Procedure?

- **5 components**
  - The Complaint
  - The Process
  - The Meeting
  - The Decision
  - Notice of Final Adverse Decision
What’s included in a Complaint Procedure?

- **Information on the Complaint**
  - Instructions on how to submit complaint.
    - Must be in writing, reference specific law(s) or regulations being violated, and include requested resolution. Form must include contact information for CIC Ombudsman.
    - Documents or information required to be submitted with complaint.
  - Acknowledgment of the complaint by the association within 7 days of receipt.
What’s included in a Complaint Procedure?

- **The Process**
  - A reasonable process for the handling of the complaint.
    - A timely method to identify and request additional information necessary to process the complaint.
    - A reasonable time frame to respond or to dispose of the complaint if the information is not provided.
What’s included in a Complaint Procedure?

- **The Meeting**
  - A meeting must be scheduled for the Board to consider the complaint.
  - Notice must be given to the complainant.
What’s included in a Complaint Procedure?

- **The Decision (aka “Final Determination”)**
  - Notice of the Board’s decision must be provided to the complainant within 7 days.
    - Include association’s registration number and the name and license number of the manager.
    - Include specific citations to applicable documents, laws or regulations that the Board relied upon.
What’s included in a Complaint Procedure?

- **Notice of Final Adverse Decision**
  - If the association’s decision is “adverse” to the complainant, the complainant can choose to have the decision reviewed by the Director of DPOR.
  - Association must provide complainant with a clear and understandable description of right to have decision reviewed.
What’s included in a Complaint Procedure?

- Complainant’s right to file with the CICB
  - Complainant must give notice to the CICB in writing, on a form supplied by the CIC Ombudsman.
    - Filed within 30 days of the date of the “final adverse decision.”
    - Must include fee, information on complainant, and association, copies of association’s documents, copies of the complaint and decision, and references to the laws and regulations alleged to be violated.
What’s included in a Complaint Procedure?

- **Association Responsibilities**
  - Associations must keep a record of each complaint for at least one year from the date of the decision.
  - Associations must make complaint procedure and forms available to a person wanting to make a complaint.
What’s included in a Complaint Procedure?

- **Association Responsibilities**
  - The complaint procedure must be included in the resale certificate or disclosure packet.
  - Association must cooperate in providing information requested by the Director of DPOR or designee within 14 days of a request.
Final Adverse Decision Process

- Association receives copy of complainant’s notice to the CICB.
- Director of DPOR reviews information.
- Director makes decision on whether association’s decision conflicts with laws or regulations governing associations.
Final Adverse Decision Process

- Decision of Director is **final** and not subject to further review.
- Decision of Director is **not binding** on the complainant or the association.
- **NOTE:** Just because it's not binding doesn’t mean it should be ignored! *(See next slide).*
Penalties

- If Association fails to establish or use a Complaint Procedure:
  - CICB may seek any of the remedies provided in Va. Code 54.1-2345 et seq. which includes:
    - Lawsuit
    - Cease and desist order
    - Monetary penalty of up to $1,000 per violation against the Board.

- If Director “rules” against Association, matter can be referred to CICB for investigation with the possibility of the above penalties.
Handling Complaints

- Is the complaint covered by the Complaint Procedure?
  - Is there an allegation of a violation of state law or regulation?
  - Does the complaint cite the specific state law or regulation?
Handling Complaints

- Does the complaint provide sufficient information to the Association to act upon the complaint?
  - Does the complaint cite the specific law or regulation that has been violated?
  - Does the complaint include copies of necessary documents?
  - Does the complaint state the remedy being requested by the complainant?
Association receives complaint from owner who feels that the Architectural Review Committee’s denial of the owner’s request to put on an ornate storm door is wrong.

Is this a Complaint covered by the Complaint Procedure?
Handling Complaints

- Association receives complaint from owner who asserts that the condo association only gave 14 days notice of the annual meeting. Bylaws provide for 14 days notice of annual meeting. Owner asserts that Condo Act provides for at least 21 days notice.

Is this a Complaint covered by the Complaint Procedure?
Handling Complaints

- Association receives complaint from owner who asserts that the Association is not pruning the owner’s trees and bushes as required by the Declaration of Covenants, Conditions and Restrictions.

Is this a Complaint covered by the Complaint Procedure?
Association receives complaint from owner that the recent amendment approved by the owners that imposes a leasing restriction violates state law.

Is this a Complaint covered by the Complaint Procedure?
1. Association must acknowledge complaint within 7 days of receipt.

2. If Complaint is not covered by the Complaint Procedure, a letter must be sent to the owner or citizen stating that it is not covered by the Complaint Procedure and no further action will be taken by the Association.

3. If Complaint is covered by the Complaint Procedure, Association must proceed with following process outlined in Complaint Procedure.
Best Management Practices for Complaint Procedure

- Implement Complaint Procedure **on time**.
- Consult with legal counsel on complaints to **obtain guidance** on the specific handling of complaints.
- **Review** Complaint Procedure **at least annually** to determine whether it (i) is working for the Association; (ii) requires additional detail; or (iii) requires updating to comply with any changes in the law or regulations.
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