



SPONSOR: Rep. M. Smith & Sen. McBride
Reps. Barbieri, Briggs King, Longhurst, Osienki, Paradee,
Scott; Sen. Townsend

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY

HOUSE BILL NO. 308
AS AMENDED BY
HOUSE AMENDMENT NOS. 1,2,3 & 4
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE STATE DEPARTMENT OF JUSTICE AND THE CREATION OF THE OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 25, Title 29 by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter IV. Common Interest Community Ombudsman.

§ 2540. Short title.

This subchapter shall be known as the "Common Interest Community Ombudsman Act".

§ 2541. Definitions.

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

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

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

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

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

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

(6) "Department" means the Department of Justice.

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

(8) "Office" means the Office of the Common Interest Community Ombudsman.

(9) "Ombudsman" means the Common Interest Community Ombudsman.

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

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

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

§ 2542. Common interest community ombudsman; creation, appointment, role, term of office, and vacancy.

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

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

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

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

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

§ 2543. Common Interest Community Ombudsman; qualifications.

The Ombudsman must:

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

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

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

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

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

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

§ 2544. Common Interest Community Ombudsman; powers and duties.

The Ombudsman shall have the following powers and duties:

(1) To contact declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties to inform them of the services available through the Office. In addition to any other method used to publicize the Office's services, the Ombudsman shall maintain a website containing information about the Office, contact information, the services available through the Office, any information required to be placed on the website by other provisions of this chapter, and any other information deemed appropriate by the Ombudsman.

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

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

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

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

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

(7) To provide meetings, mediation, or other forms of alternative dispute resolution as may from time to time be requested by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties. Nothing in this paragraph shall affect the right of a declarant, common interest community association, the executive board of a common interest community association, unit owners in common interest community, or other interested parties from proceeding pursuant to the procedure established by § 348 of Title 10.

(8) To establish a template of reasonable written procedures for the executive board of a common interest community association to adopt to internally handle complaints from unit owners and other interested parties. Each common interest community association shall adhere to the established written procedures when resolving complaints from unit owners and other interested parties. The procedures established by the Ombudsman and adhered to by the common interest community association may include the following, in addition to procedures outlined in the common interest community association's declaration, bylaws, or other governing documents:

a. That the complaint to the common interest community association must be in writing.

b. That a sample complaint form, if any, on which the complaint must be filed shall be provided upon request.

c. That the common interest community association's complaint written procedure shall include the process by which the complaint shall be delivered to the common interest community association.

d. That the common interest community association shall provide written acknowledgment of the receipt of the complaint to the complainant within 14 days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

e. That any specific documentation that must be provided with the complaint shall be described in the common interest community association's complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.

f. That the common interest community association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the complaint. The common interest community association shall establish a reasonable

timeframe for responding to and disposing of the complaint if the request for information is not received within the required timeframe.

g. That, within a reasonable time prior to the consideration of the complaint, the complainant shall be notified of the date, time, and location that the complaint will be considered. For purposes of this paragraph, “reasonable time” shall mean such time as established by the common interest community association’s complaint procedure, but shall not be less than 7 days prior to the date for consideration of the complaint. Notice of the date, time, and location for consideration of the complaint shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

h. That after the final determination is made, the written notice of the final determination shall within 14 days be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

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

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

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

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

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

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

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

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

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

a. Statistics on the number of inquiries and complaints handles 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 Ombudsman and the Common Interest Community Advisory Council;

f. Any other information deemed appropriate by the Ombudsman.

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

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

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

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

§ 2545. Required information.

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

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

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

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

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

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

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

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

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

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

§ 2546. Common Interest Community Advisory Council.

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

(1) Three members of the public who are members of the executive board of a common interest community, one from each county, appointed by the Governor;

(2) The Mayor of the City of Wilmington or a designee appointed by the Mayor;

(3) The County Executive of New Castle County or a designee appointed by the County Executive;

(4) The President of the Kent County Levy Court or a designee appointed by the President;

(5) The President of the Sussex County Council or a designee appointed by the President;

(6) Three members appointed by the Speaker of the House;

(7) Three members appointed by the President *pro tempore* of the Senate;

(8) The Secretary of State or a designee appointed by the Secretary of State;

(9) Two members from the Real Property Section of the Delaware State Bar Association whose practice involves the creation of, or the handling of disputes arising from, common interest communities, appointed by the President of the Delaware State Bar Association;

(11) The President of the Home Builders Association of Delaware or a designee appointed by the President;

(12) The Chief Executive Officer of Community Associations Institute or a designee appointed by the Chief Executive Officer.

(b) The members of the Council shall serve until a replacement is appointed pursuant to the same process as the member's appointment.

(c) The members of the Council shall serve without compensation, except that they may be reimbursed for reasonable necessary expenses incident to their duties as members in accordance with state law.

(d) The Chairperson of the Council shall be designated by the Attorney General from among the members of the Council.

(e) The powers of the Council shall be exercised by a majority vote of all members present. A quorum of 9 shall be necessary to hold a meeting of the Council.

(f) The Council shall:

(1) Advise the Ombudsman regarding issues related to common interest communities, including:

a. Mechanisms to increase the collection rate for common interest community assessments;

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

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

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

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

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

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

(4) Assist the Ombudsman in the preparation of the annual report required of the Ombudsman by § 2544(15) of this title.

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

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

Section 3. In order to allow sufficient time to complete the logistical steps necessary to make the Office of the Common Interest Community Ombudsman fully operational, the Office shall not be required to accept inquires or complaints or provide services to the public prior to February 1, 2015, unless the Ombudsman determines that the Office is prepared to do so prior to February 1, 2015.