

**COMMON INTEREST COMMUNITY OMBUDSPERSON'S
TEMPLATE FOR
HOMEOWNERS' ASSOCIATIONS' EXECUTIVE BOARDS TO ADOPT
FOR *INTERNAL* RESOLUTION OF COMPLAINTS (IDR)**

Introduction

The Common Interest Community Ombudsperson Act requires the Ombudsperson (the "Ombudsperson" or "Office"). "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." [29 Del. C. §2544 \(8\)](#). The Act states:

"Each common interest community association shall establish and adhere to the established written procedures when resolving complaints from Unit Owners and other interested parties.

The procedures established by the Ombudsperson and adhered to by the Association may include the following, in addition to procedures outlined in the common interest community Association's declaration, bylaws, or other governing documents."

- The Office of the Ombudsperson interprets this as requiring each "common interest community" (CIC) Association to follow a written procedure for *internally* and informally reviewing and resolving Unit Owner complaints and Association Complaints against a Unit Owner.
- An Association should comply with the requirement of a written procedure by adapting the Ombudsperson's Template, consistent with procedures in the Association's declaration, certificate of incorporation, bylaws, rules and law, and "due process" including "notice and opportunity to be heard."
- The Ombudsperson recommends that boards adapt procedures from the governing documents into a single written "Internal Dispute Resolution" (or IDR) procedure, and resolve any conflicts with the requirements of section 2544 (8), using current understandings of "due process."

If an Association has no written IDR procedure for resolving complaints from or about Unit Owners, the board should adapt the following procedure to conform to its governing documents.

- The Office will apply this Template procedure if the Association does not adopt its own.
- A unit owner may edit this Template to file a complaint with the board if the association has no IDR procedure.
- The Association can use this procedure for claims against an Owner, as limited in the procedure.

The Office recommends that each Association let Owners know about use of the IDR Complaint forms and give an "opportunity to be heard" *before* filing a lawsuit, or recording a lien on an Owner's home.

An Owner with a complaint must first use an IDR process to let the board know of a claim involving violation of a governing document or statute before the Ombudsperson can review the complaint. You must file your completed IDR Complaint form with the board. Do not send it to the Ombudsperson unless it is not resolved *internally*. Then you must attach it to the Ombudsperson's "Contact&COMPLAINT" form, as explained in the "Procedure for Filing a Complaint" on the website.

You can fill out this IDR Complaint form online, save it to your own computer, and print it. Send it to the board, not to the Ombudsperson. Save your copy or print enough for you, the board, and the Ombudsperson.

Please direct comments about this form and these procedures to the Ombudsman.

TEMPLATE FOR *INTERNAL DISPUTE RESOLUTION* (“IDR”)

[Insert Name of Common Interest Community Association]

[Insert Address and Telephone Number of Association or Managing Agent]

PROCEDURE TO FILE AN INTERNAL COMPLAINT WITH THE BOARD

1. The Unit Owner or other interested person may deliver a Common Interest Community (CIC) Complaint to the Association.¹ The Association may deliver a CIC Complaint to a Unit Owner (“Owner”) or Other interested person. Whoever delivers a CIC Complaint is the “Complainant.” Whoever the CIC Complaint seeks a response from is the “Respondent.”

1.2. The Association shall not charge an Owner a fee to use the process, unless the Association determines the process is being abused.

2. The Complaint must be on the attached CIC Complaint Form, or one substantially similar to the CIC Complaint Form. The Association will provide a copy of the Form to the Owner upon request, or otherwise make the form generally and easily available.²

3. The Complainant must deliver the completed CIC Complaint, including all required supporting information to the Respondent. The respondent shall mark on the CIC complaint the date of receipt, and shall mark the date of receipt on copies of the CIC Form if requested by the complainant.³

3.1 For these procedures, a party makes “delivery”⁴ to the current address provided by the other party in one of the following ways:

- In person,
- hand delivery ,
- USPS “Delivery Tracking,”
- FedEx or other delivery service that creates a record of delivery,
- registered or certified mail, return receipt requested ,or,
- if consistent with established procedure of the Association, by electronic means, provided the sender retains sufficient proof of the electronic delivery.

3.2 If a Unit Owner delivers a CIC Complaint to the Association, the Association must use this Internal Dispute Resolution procedure.

¹ 29 Del. C. §2544 (8)

² 29 Del. C. §2544 (8) (a), (b)

³ 29 Del. C. §2544 (8) (c)

⁴ 29 Del. C. §2544 (8) (c), (d)

4. An Association must acknowledge receipt of an Owner's CIC Complaint in writing within 14 days of receipt by any of the means described in paragraph 3.1.⁵

5. The complainant must deliver any specific documents required to support the CIC Complaint with, the Complaint, must describe the documents and the requested action or resolution.⁶ The documentation may include:

- the Declaration;
- the Certificate of incorporation;
- the Bylaws;
- any Rules of the Association;
- any other governing document of the Association;
- notice letters, correspondence;
- bills;
- checks;
- photographs;
- any other document or evidence that supports the CIC Complaint, or applies to the claim, and
- if known, a reference to the law, restriction or regulation applicable to the complaint.

5.1 The Association will make and provide a copy of the governing or corporation documents to the Owner on request. Governing documents include: declarations, the certificate of incorporation, bylaws, rules, covenants or any other documents creating or governing the Association. Corporation documents include other applicable books and records of the Association.⁷

5.2 If the Complainant or Respondent relies upon any law or regulation applicable to the CIC Complaint, they should provide that information, and describe the desired action or resolution in the CIC Complaint.⁸

6A. A party to a dispute may request the other party, in writing, to "meet and confer" in an effort to resolve the dispute. The board shall promptly designate a director to meet and confer. The parties shall meet promptly at a mutually convenient time and place, informally explain their positions to each other, and confer in good faith in an effort to resolve the dispute. Anything the parties agree to must be put in writing and signed by the parties, including a designee of the association. The agreement binds the parties and is judicially enforceable if is signed by the parties; is not in conflict with law or the governing documents of the Association; and is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

6B. If the dispute requires additional information, the Association may within 20 days after, make a reasonable, efficient, and timely request for any additional information that is necessary for the Owner to provide in order to continue processing the CIC Complaint.⁹ An Owner who is a Respondent, may request additional information within 20 days of receipt of the Complaint.

⁵ 29 Del. C. §2544 (8) (d)

⁶ 29 Del. C. §2544 (8) (e)

⁷ 25 Del. C. §81-318 (a)(4), (b)

⁸ 29 Del. C. §2544 (8) (e)

⁹ 29 Del. C. §2544 (8) (f)

6.1 The Respondent will provide the requested information, if any, within 10 days of the request, unless there are unforeseen circumstances. If there are unforeseen circumstances the Respondent must notify the Complainant when the information will be provided.

6.2 The Respondent must respond to and act upon the CIC Complaint within 20 days after the Complainant provides the information requested, or the time expires.¹⁰

7. The Association must deliver notice to the Owner not less than 7 days before, of the date, time, and location that the Association will consider the CIC Complaint by any means described in section 3.1¹¹

8. The Association must give the Owner a full opportunity to explain the Owner's position and evidence, and to call and question witnesses, Association members, employees or representatives. The Association may ask the Owner questions, call and question others.

8.1 Each party must treat the other with civility, dignity and respect. Neither party need tolerate shouting, rudeness, name-calling, or disrespect. Either party may call a 10 minute recess in the meeting.

9. No later than 14 days after the meeting considering the CIC Complaint, the Association shall make its final determination in writing. The Association shall deliver written notice of its final determination to the Owner.¹⁴

9.1 The notice of final determination shall bear the date of issuance and include:

- the written final determination explaining reasons for the decision;
- quotation of the Associations' declaration, certificate of incorporation bylaws, rules or other governing documents; or
- a reference to any applicable law, regulation or rule that led to the final determination;¹⁵
- any supporting documents, correspondence, and other materials that led to the final determination;
- the registration number for the Association,¹⁶ if any; and
- the name and license number of the community manager,¹⁷ if any.

10. The notice of final determination must inform the Owner of the right to submit the Association's final determination to the Office of the Ombudsperson¹⁸ in substantially the following form:

"Notice:

If the board issues a final decision denying your CIC Complaint, or if the board does not respond to it after 20 days, you have the right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsperson under to 29 *Del. C.* §2544 (9), (10).

The notice to the Ombudsperson:

¹⁰ 29 *Del. C.* §2544 (8) (f)

¹¹ 29 *Del. C.* §2544 (8) (g)

¹⁴ 29 *Del. C.* §2544 (8) (h)

¹⁵ 29 *Del. C.* §2544 (8) (i)

¹⁶ 29 *Del. C.* §2544 (8) (i)

¹⁷ 29 *Del. C.* §2544 (8) (i)

¹⁸ 29 *Del. C.* §2544 (9), (10)

- must be filed within 30 days of the final adverse decision (unless waived by the Ombudsperson for good cause);
- must be in writing on the Ombudsperson’s ‘Contact/Complaint’ form (available on the website of the Ombudsperson or by calling the number below). Fill out the “Contact/COMPLAINT” form completely;
- must include the complete IDR complaint with attachments;
- must include a copy of the board’s written decision;
- must include copies of any Required Information¹⁹ listed in the Contact/Complaint form and supporting documents, correspondence and other materials related to the decision; and
- must enclose the \$35 filing fee²⁰ (unless waived by the Ombudsperson for good cause).

You may contact the Office of the Ombudsperson through:

Delaware Department of Justice
 Office of the Common Interest Community Ombudsperson
 820 N. French Street
 Wilmington, DE 19801
 Telephone: (302) 577-8400
 email: CIC.OmbudsmanDOJ@state.de.us

TEMPLATE FOR INTERNAL DISPUTE RESOLUTION (IDR) COMPLAINT FORM

(An editable version is available online)

Ombudsman’s COMMON INTEREST COMMUNITY (CIC) INTERNAL COMPLAINT FORM
Insert Name of Common Interest Community Association
Insert Address and Telephone Number of Association or Managing Agent

The Board of Directors (Board) of the **Community Association Name** (the “Board”) adopted this complaint form for filing a written CIC Complaint *internally* with the Board about violations of the community’s governing documents including:

- The Plat or Plot plan,
- The Declaration,
- The Certificate of Incorporation,
- The Bylaws,
- The Rules or policy of the community, or
- The applicable law (if known) such as:
 - The Delaware Uniform Common Interest Ownership Act (DUCIOA), 25 *Del. C.* ch. 8;
 - The Unit Properties Act (UPA for Condominiums), 25 *Del. C.* ch. 22

¹⁹ 29 *Del. C.* §2545 (a)

²⁰ 29 *Del. C.* §2544 (15)

- The Delaware General Corporation Law (DGCL) 8 *Del. C.* ch. 1
- The Office of the Common Interest Community Ombudsperson Act, 29 *Del. C.* ch. 2544

This form may be used for other complaints as well.

Instructions: You can fill-in this form online at the Ombudsman's website. If you have more than one complaint to explain, please answer these questions for each complaint or document violated and include them all as one complaint to the board.

For each complaint, please answer these questions:

1. Describe your claim in a few words. (Examples: Denial of access to records; Violation of bylaws on elections...)

Please Enter Text Here

2. What document (the Declaration, Certificate of Incorporation, Bylaws or Rule) and paragraph number did anyone violate? Please select all that apply. If other please specify.

- Plat Plan
- Declaration
- Certificate of Incorporation
- Bylaws
- Rules
- Amendment to any Document
- DUCIOA
- Unit Property Act
- General Corporation Law
- Other

Please Enter Text Here

3. Please quote the part of each section violated.

Please Enter Text Here

4. Explain in what way anyone violated the section, in the order things happened, starting at the beginning.

Please Enter Text Here

5. Describe, explain and attach any documents or other evidence that supports your claim. (Examples: Meeting minutes, Notices, letters, emails, policy statements, photos...)

6.

Please Enter Text Here

7. Please state what you want to the Board to do because of your complaint.

Please Enter Text Here

8. Anything else important to know about your complaint?

Please Enter Text Here

Please sign, date, and print your name and address below and submit this completed form to the Association at the address listed above.

Printed Name: **Please Enter Text Here**

Date: **Please Click Here to Enter a Date**

Signature: _____

Your Mailing Address: **Please Enter Text Here**

Lot/Unit Address: **Please Enter Text Here**

Your Contact Preference: **Please Choose an Item**

Your Telephone or cell #: **Please Enter Text Here**

Your Email Address: **Please Enter Text Here**

Other: **Please Enter Text Here**

NOTICE:

If the Board issues a final decision denying your CIC Complaint, or if the board does not respond to it after 20 days, you have the right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsperson under 29 *Del. C.* §2544 (9), (10).

The Notice to the Ombudsperson:

- Must be filed within 30 days of the Final Adverse Decision (unless waived by the Ombudsperson for good cause);
- Must be in writing on the Ombudsperson's "Contact/Complaint" form (available on the website of the Ombudsperson or by calling the number below). Fill out the "Contact/COMPLAINT" form completely;
- Must include your complete CIC *Internal* Complaint with attachments;
- Must include a copy of the Board's written decision, if any;
- Must include copies of any "Required Information"^[1] listed in the Contact/Complaint form and supporting documents, correspondence and other materials related to the decision; and
- Must enclose the \$35 filing fee^[2] (unless waived by the Ombudsperson for good cause).

You may contact the Office of the Ombudsperson through:

Delaware Department of Justice

Office of the Common Interest Community Ombudsperson

820 N. French Street

Wilmington, DE 19801

^[1] 29 *Del. C.* §2545 (a)

^[2] 29 *Del. C.* §2544 (15)

Tel: (302) 577-8600

email: CIC.OmbudsmanDOJ@state.de.us

I caused this CIC Complaint and all attached documents to be delivered to the Association / Respondent at the address provided by the Respondent on Please Click Here to Enter a Date at Please Choose a Time by the following method of delivery: Please Choose and Item If Selected Options 7 or 8. Please Specify Here

I made and kept a record of how I delivered the complaint to the board.

Your Name: **Please Enter Text Here**

Signature: _____

Date: Please Click Here to Enter a Date