

## Condominium Dispute Resolution

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### Issue

Describe (1) condominium dispute resolution procedures available to unit owners in Connecticut and (2) laws in other states related to condominium dispute resolution, including those authorizing states to facilitate or require mediation or take enforcement actions.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

### Summary

In Connecticut, condominium unit owners have several options to enforce common interest community laws or resolve disputes related to association declarations or bylaws, including (1) private enforcement through condominium boards; (2) alternative dispute resolution (ADR); or (3) the courts. There is no state agency that oversees compliance with these laws or has general authority over condominium disputes.

The Connecticut legislature has previously considered several bills that would have established additional options or requirements for addressing condominium-related disputes, namely by (1) creating a pilot mediation program or condominium ombudsperson's office or (2) requiring that applicable disputes be resolved through ADR. None of these bills were enacted into law.

A number of states have enacted legislation related to condominium dispute resolution, which varies in scope. These laws generally include some or all of the following components: complaint data collection and reporting; creation of condominium ombudsperson offices; required procedures

for handling complaints outside of court; and processes by which the state can receive and investigate complaints about certain violations and take various enforcement actions.

## **Dispute Resolution in Connecticut**

Under the Common Interest Ownership Act (CIOA; see Background), a condominium unit owner may (1) request a hearing before the condominium board to enforce the applicable law or association's declaration or bylaws; (2) request to engage in ADR; or (3) file a lawsuit to enforce a right granted or obligation imposed by CIOA, the declaration, or the bylaws ([CGS § 47-278](#), as amended by [PA 21-169](#), § 4). The law also permits associations to adopt rules requiring that disputes between the board and a unit owner or between two or more unit owners be submitted to non-binding ADR before entering litigation ([CGS § 47-244\(a\)\(18\)](#)). For more information on ADR generally, see the [Judicial Branch's webpage](#) on this topic.

There is no Connecticut state agency that generally oversees compliance with CIOA or has specific authority over disputes between unit owners or owners and boards. The Department of Consumer Protection (DCP) registers third-party community association managers but does not otherwise regulate condominiums. [According to DCP](#), state law allows condominium boards broad discretion in enforcing association rules. A board may decline to take action against violators under the following circumstances:

1. the association's legal position does not justify it;
2. the rule being enforced is illegal or will likely be construed as such;
3. the violation does not justify the enforcement expense to the association; or
4. the enforcement action is not in the association's best interest ([CSG § 47-244\(g\)](#)).

Among other things, the law generally requires a condominium association, before bringing an action or proceeding against a unit owner other than the declarant (i.e., the developer), to hold a hearing during a board meeting and follow specified procedures ([CGS § 47-278](#), as amended by [PA 21-169](#), § 4).

### ***Previous Legislation***

In recent years, the Connecticut legislature has considered several bills that would further address condominium-related disputes by creating a (1) pilot mediation program or (2) condominium ombudsperson's office. Additionally, a 2011 bill favorably reported by the Judiciary Committee would have generally required, rather than allowed, parties with a dispute under CIOA or an association's declaration or bylaws to agree to resolve the dispute through ADR ([sHB 6620 \(2011\)](#)).

### *Pilot Mediation Program*

Two bills favorably reported by the Housing and Judiciary committees in 2017 and 2015, respectively, would have required the probate court administrator to establish a voluntary mediation pilot program for disputes between unit owners and a condominium association. Among other things, the bills established a (1) process for requesting mediation, including a \$250 filing fee and (2) mediation procedure for the court and participating parties. The bills required special assignment probate judges to conduct the mediations ([SB 814 \(2017\)](#) & [HB 7031 \(2015\)](#)).

### *Condominium Ombudsperson's Office*

A 2010 bill favorably reported by the General Law, Government Administration and Elections, and Appropriations committees would have established an Office of Condominium Ombudsman within DCP and provided the commissioner powers relating to (1) investigating and resolving complaints concerning common interest communities and (2) analyzing and making recommendations on the laws that govern them. The bill required associations to establish a dispute resolution process for unit owner complaints about an association's compliance with applicable laws and certain bylaws. It also allowed any unit owner or group of owners to file a request with the ombudsman office for the DCP commissioner to review complaints related to violations of CIOA, the Condominium Act, or certain bylaws if (1) the complaint was first reviewed through the association's dispute resolution process required by the bill or (2) the association failed to establish a resolution process ([sSB 129 \(2010\)](#)).

## **Dispute Resolution Laws in Other States**

A number of other states have enacted legislation related to condominium disputes, and these laws vary significantly in scope. For example, some states simply track certain complaint data and report on this information annually (e.g., Colorado and South Carolina). On the other end of the spectrum, several states have established (1) condominium ombudsperson offices, (2) required procedures for handling complaints outside of court, and (3) processes by which the state can receive and investigate complaints about certain violations and take various enforcement actions (e.g., Delaware, Nevada, and Virginia). Other states have enacted laws that include only some of these components. Below we provide brief summaries of several condominium dispute-related laws we identified outside Connecticut.

### *California*

California's Davis-Stirling Act requires associations to provide an internal dispute resolution (IDR) procedure for resolving disputes that (1) is "fair, reasonable, and expeditious" and (2) meets certain requirements, such as providing prompt deadlines and allowing both members and the association to explain their positions ([Cal. Civ. Code §§ 5905 & 5910](#)). If an association fails to do

so, the law establishes a default IDR procedure that parties to a dispute may avail themselves of ([Cal. Civ. Code §§ 5905\(c\) & 5915](#)). An association is prohibited from filing a civil action regarding a dispute unless it has engaged in an IDR procedure in good faith, when applicable ([Cal. Civ. Code § 5910.1](#)). Furthermore, the law generally prohibits associations and members from filing an enforcement action in superior court unless the parties have first “endeavored” to submit their dispute to ADR (i.e., binding or non-binding mediation, arbitration, conciliation, or other nonjudicial procedure involving a neutral party in the decision-making process) ([Cal. Civ. Code § 5930](#)).

### *Colorado*

By law, Colorado’s [HOA Information & Resource Center](#), located within the Department of Regulatory Agencies’ (DORA) Division of Real Estate, acts as a clearing house for information on the basic rights and duties of unit owners, declarants, and associations by (1) compiling a database about registered associations; (2) coordinating and assisting in the preparation of educational and reference materials, including maintaining an [FAQ webpage](#); and (3) monitoring changes in relevant federal and state laws and providing related information. The center is headed by the HOA Information Officer, who is appointed by the DORA executive director. The officer is required to track inquiries and complaints and report annually on this information to the executive director ([Col. Rev. Stat. § 12-10-801](#)).

HOAs are generally governed by the Colorado Common Interest Ownership Act and the state does not have regulatory oversight of HOAs or association managers.

### *Delaware*

Delaware’s [Office of the Ombudsperson for the Common Interest Community](#), located within the Department of Justice, assists members of residential common interest communities to (1) understand their rights and responsibilities and (2) resolve disputes without use of the judicial system, where possible. The ombudsperson, who is appointed by the attorney general, manages the office consistent with certain powers and duties (and within available appropriations). By law, he or she may provide meetings, mediation, or other forms of ADR, as requested by declarants, associations, executive boards, unit owners, or other interested parties. Additionally, the ombudsperson is authorized to establish a [template](#) of reasonable written procedures for executive boards to adopt for internally handling complaints from unit owners and other interested parties (i.e., an IDR procedure). By law, associations must adhere to their adopted procedures when resolving complaints.

After completing the IDR procedure and receiving a final determination, parties may submit to the ombudsperson complaints about violations of the law, regulations, or documents governing their respective common interest community. The ombudsperson is authorized to (1) investigate these

complaints; (2) provide dispute resolution assistance, if appropriate, and establish and publish related procedural rules; (3) refer meritorious violations of state law to the attorney general or appropriate law enforcement agency; and (4) subpoena witnesses, compel attendance and testimony, administer oaths and affirmations, and take evidence ([Del. Code tit. 29, § 2544](#)).

### *Florida*

Florida's [Office of the Condominium Ombudsman](#), located for administrative purposes within the Department of Business & Professional Regulation's Division of Florida Condominiums, Timeshares, and Mobile Homes, is headed by an ombudsman appointed by the governor ([Fla. Stat. § 718.5011](#)). Florida law provides the ombudsman with certain powers, which among other things, include the following:

1. employing staff;
2. issuing reports and legislative recommendations to the executive and legislative branch;
3. assisting unit owners, boards, managers, and other applicable parties in understanding their rights and responsibilities under state condominium law and associations' governing documents, and acting as a liaison between these parties and the state;
4. encouraging and facilitating voluntary meetings between affected parties that may assist in informal dispute resolution; and
5. assisting in resolving certain disputes ([Fla. Stat. § 718.5012](#)).

The office is funded by the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund ([Fla. Stat. § 718.5011](#)). Various fees, fines, and penalties are paid into the fund, such as the annual \$4 fee per residential unit condominium associations pay to the state ([Fla. Stat. §§ 718.501\(2\)\(a\) & 718.509](#)).

Florida law requires parties to certain residential condominium disputes, before proceeding with court litigation, to engage in (1) non-binding arbitration or (2) pre-suit mediation. It allows the state to (1) employ full-time attorneys to conduct arbitration hearings and (2) certify private attorneys to do the same ([Fla. Stat. § 718.1255\(4\)](#)).

### *Hawaii*

Hawaii law generally requires mediation if a condominium owner or the board requests it for certain disputes regarding interpretation or enforcement of an association's declaration, bylaws, or rules. It also authorizes owners and associations to apply to the applicable circuit court for an order compelling mandatory mediation if the parties have failed to agree on a mediator and mediation date within 45 days after a party received a written mediation request.

Additionally, the law allows funding from the Condominium Education Trust Fund (CETF) to support individual mediation meeting certain requirements. In cases of subsidized mediation, parties each pay a \$375 fee to the mediator and up to \$3,000 from the fund can support the mediation ([Haw. Rev. Stat. § 514B-161](#)). The CETF is governed by the Department of Commerce and Consumer Affairs's [Real Estate Branch](#) ([Haw. Rev. Stat. § 514B-71](#)). The fund can also be used in support of voluntary binding arbitration for condominium-related disputes, so long as the parties have first attempted evaluative mediation as described above ([Haw. Rev. Stat. § 514B-162.5](#)).

### *Illinois*

Illinois' [Office of the Condominium and Common Interest Community \(CCIC\) Ombudsperson](#) is located within the Department of Financial and Professional Regulation's Division of Real Estate. The ombudsperson generally provides information on rights and obligations under state law to unit owners, associations, and boards. Specifically, the ombudsperson: (1) educates unit owners, associations, and boards; (2) publishes information useful to these entities; and (3) responds to relevant inquiries by providing educational materials and directing citizens to relevant resources ([765 Ill. Comp. Stat. 615/1 et seq.](#)). The office does not enforce laws or regulations or participate in dispute mediation. By law, subject to appropriation, the ombudsperson is authorized to receive written requests from qualifying unit owners who require assistance resolving certain disputes between themselves and an association ([765 Ill. Comp. Stat. 615/40](#)).

Associations are generally required to (1) adopt a written policy for resolving complaints made by unit owners and (2) make the policy available to owners by request. Owners are authorized to notify the CCIC ombudsperson of violations ([765 Ill. Comp. Stat. 615/35](#)).

### *New Jersey*

The New Jersey Condominium Act requires associations to provide an ADR procedure to unit owners, defined as a "fair and efficient" procedure for resolving housing-related disputes between one another or with the association. It also authorizes (1) unit owners to notify the Department of Community Affairs (DCA) of noncompliant associations and (2) DCA to order associations to comply ([N.J. Stat. § 46:8B-14\(k\)](#)). The department's Association Regulation Unit [receives complaints](#) and enforces these provisions by requiring common interest communities to adopt an ADR procedure and provide it when applicable.

### *Nevada*

Nevada's [Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels](#), located within the Department of Business and Industry's Nevada Real Estate Division, was created to assist owners and board members in common interest communities to

better understand their rights and obligations under the law and their governing documents. It is supported by an account that is generally funded through an assessment of no more than \$4.25 per unit, per year on all non-exempt communities ([Nev. Rev. Stat. § 116.630](#)). The office's duties include the following:

1. assisting in processing mediation and arbitration claims;
2. publishing educational materials;
3. investigating disputes related to the state's Common-Interest Ownership and Condominium Hotel acts or an association's governing documents, and assisting in resolving these disputes;
4. assisting executive board members to carry out their duties; and
5. compiling and maintaining a registration for each association organized within the state that includes specified information ([Nev. Rev. Stat. § 116.625](#)).

Before any civil action can be taken for a dispute involving an association's governing documents, Nevada law requires the parties to complete an ADR process. Specifically, the parties must participate in either the "referee program" or mediation. The state-administered referee program is free except for a \$50 filing fee. Under the program, state-approved licensed attorneys (referees) are assigned to claims and schedule a hearing for parties to present their evidence. After receiving the referee's decision, the parties have 60 days to file a claim with the appropriate court. If neither party files a claim, the referee's decision can be confirmed in court by either party within one year. Confirmation makes the decision an order of the court and is binding on both parties.

In a mediation proceeding, state-certified mediators meet with the parties to promote reconciliation, agreement, and compromise. A successful mediation results in the parties signing an enforceable written agreement. The cost of mediation is generally capped at \$500 for three hours and may be eligible for a state subsidy of up to \$250 per party ([Nev. Rev. Stat. §§ 38.300 to 38.360](#) & [Nev. Admin. Code 116.520](#)). The Nevada Real Estate Division's [ADR Process Overview](#) provides additional details on the programs.

Additionally, Nevada law contains provisions establishing a comprehensive process by which the state may receive and investigate complaints of violations of the Common-Interest Ownership Act, related regulations, and certain orders. It authorizes the Commission for Common-Interest Communities and Condominium Hotels, which consists of seven governor-appointed members meeting certain qualifications, to take various enforcement actions, including issuing orders and imposing administrative fines ([Nev. Rev. Stat. §§ 116.600 & 116.745 et seq.](#)).



## *Pennsylvania*

Pennsylvania law requires all condominiums created after July 3, 2018, to adopt bylaws that establish an ADR procedure for disputes between unit owners or an owner and the association ([68 Pa. Stat. and Cons. Stat. § 3321](#)). It also allows an owner in good standing (i.e., generally current in payment of assessments and fines) to file a complaint with the Bureau of Consumer Protection regarding certain association or declarant violations, including those relating to meetings, quorums, voting, and association records. If an association's governing documents provide an ADR procedure, an owner cannot file a complaint until after (1) exhausting the ADR procedure without a resolution or (2) 100 days have passed since he or she commenced the procedure, and no resolution has been reached. The law allows a unit owner to file an immediate complaint with the Bureau of Consumer Protection if the association's governing documents do not provide an ADR procedure or the association refuses ADR ([68 Pa. Stat. and Cons. Stat. § 3322](#)).

## *South Carolina*

South Carolina's [Department of Consumer Affairs](#) is required to (1) collect certain data from complaints involving homeowners associations and (2) report on this data to the governor and general assembly annually ([S.C. Code § 27-30-340](#)).

## *Virginia*

Virginia's [Office of the Common Interest Community Ombudsman](#), located within the state's Department of Professional and Occupational Regulation, offers assistance and information to association members about common interest communities and the rights and processes available to them through their associations. It is supported by the Common Interest Community Management Information Fund, which is generally funded through fees on associations and community manager licenses ([Va. Code § 54.1-2354.2](#)). The office is required, among other things, to do the following:

1. receive notices of final adverse decisions (i.e., certain complaints; see below);
2. provide referrals to public and private agencies offering ADR services;
3. maintain data on: inquiries, requests for assistance, and notices of final adverse decisions the office receives; actions taken; and disposition of each matter;
4. provide assessments of proposed and existing common interest community laws and other studies of applicable issues; and
5. monitor changes in applicable federal and state law ([Va. Code § 54.1-2354.3](#)).

By law, all associations must establish an internal complaint procedure that includes specific components and adhere to this procedure when resolving complaints. Virginia's statutory



framework for complaint processing generally provides for the ombudsman office to accept and review only “notices of final adverse decisions” (NFADs). Complainants are only eligible to file an NFAD with the ombudsman office after first attempting to resolve the complaint using the association’s internal procedure. Additionally, complaints subject to review by the ombudsman are restricted to allegations of violations of common interest community law or regulations ([Va. Code § 54.1-2354.4](#) & [18 Va. Admin. Code 48-70-50](#)).

Ombudsman determinations, which are publicly posted, are non-binding final decisions as to whether final adverse decisions conflict with these laws and regulations. In its [2020-2021 annual report](#), the ombudsman office reported that it obtained full compliance with all [determinations](#) that it issued during the covered period.

## **Background**

### ***CIOA and Condominium Act***

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut on and after January 1, 1984 ([CGS § 47-200 et seq.](#)). Certain CIOA provisions also apply to common interest communities created before January 1, 1984, but do not invalidate existing provisions of their governing instruments. Common interest communities created before that date can amend their governing instruments to conform to portions of CIOA that do not automatically apply ([CGS §§ 47-214, 216, & 218](#)).

The Condominium Act ([CGS § 47-68a et seq.](#)) governs condominiums created from 1977 through 1983, except when CIOA applies.

## **Additional Resources**

- Community Associations Institute, “[Dispute Resolution for Residents: Ombudsman or Similar Programs.](#)”
- Connecticut Judicial Branch, “[Connecticut Law About Condominiums.](#)”

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