

CASE STUDY AND POLICY RECOMMENDATION

Structural Limitations of the Delaware Common Interest Community Ombudsman Process

A Case Study from Mallard Lakes Condominium, Selbyville, Delaware

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Executive Summary

The Delaware Common Interest Community Ombudsman's office provides an important dispute resolution pathway for condominium and HOA owners. Delaware law ([29 Del. C. § 2546](#)) requires that the Ombudsman's Advisory Council include attorneys whose practice involves the creation of, or the handling of disputes arising from, common interest communities — a reasonable structural decision intended to bring legal expertise to the council's work.

A review of [29 Del. C. § 2546](#), the Delaware DOJ Advisory Council webpage, and all publicly available Advisory Council rosters and operating procedures confirms that the statute and the council's published governance framework contain no conflict of interest policy, no recusal requirement, and no disclosure obligation for Advisory Council members. This structural gap is documented and verifiable.

This case study documents how that gap, in practice, can create a dynamic in which Association counsel serving on the Advisory Council simultaneously represents HOA boards in legal actions against homeowners using that same process. This paper does not allege individual misconduct. It identifies a structural absence in the statute and suggests targeted modifications to address it.

As Delaware's common interest community population grows and coastal resilience pressures increase, the Ombudsman process will likely become an increasingly important resource for homeowners seeking alternatives to costly litigation. The structural integrity of that process — and public confidence in its neutrality — will matter more, not less, in the years ahead.

Why This Matters Statewide

Delaware has a large and growing population living in common interest communities — condominiums, homeowner associations, and cooperatives — as defined under [25 Del. C. § 81-103](#). These communities represent a significant and increasing share of the state's housing stock, particularly in Sussex County and along the coastal corridor, and

their residents rely on the Ombudsman process as their primary accessible alternative to litigation when disputes with association boards arise.

Several statewide trends make the structural integrity of the Ombudsman process increasingly important:

- Coastal resilience pressures are growing. As sea levels rise and storm frequency increases, communities in Delaware's coastal and inland bay areas face escalating flood risk, infrastructure decisions, and financial exposure. Disputes between homeowners and association boards over flood mitigation planning, assessment authority, insurance obligations, and long-term capital decisions are likely to increase. The Mallard Lakes case documented in this paper — in which a property owner's independent research into government flood mitigation programs led to litigation — is an early example of a category of dispute that may become more common across Delaware's coastal communities.

The Ombudsman process may become increasingly important as an alternative to litigation. The General Assembly established the Office specifically because, as noted in the Ombudsman's 2024 Annual Report ([29 Del. C. § 2544\(16\)](#)), county and municipal governments required developers to create common interest communities, resulting in a large population of residents governed by private associations without recourse to traditional municipal dispute resolution pathways. As HOA-related disputes grow in complexity and frequency, homeowners with limited financial resources will increasingly depend on the Ombudsman process as their primary pathway for resolution.

- Public confidence in neutrality is critical to the process functioning as intended. The Ombudsman process was established to provide accessible, neutral dispute resolution for Delaware's common interest community residents. If the governance structure of that process — including the Advisory Council that advises it on conflict resolution procedures — is perceived as structurally weighted toward association interests, homeowners will disengage from it. The result is more litigation, more cost, and less accessible justice for the residents the process was designed to serve.

The structural gap identified in this paper is not merely a technical concern about one advisory council's governance. It is a question about whether Delaware's common interest community dispute resolution framework is structurally positioned to serve all of its constituents equitably as the demands on it grow.

Why Common Interest Community Disputes Require Particular Attention to Perceived Neutrality

Common interest community disputes are particularly sensitive to questions of perceived neutrality — more so than many other dispute resolution contexts. Unlike commercial disputes between sophisticated parties with comparable resources and legal representation, HOA disputes typically involve an individual homeowner on one side and a professionally managed association with retained legal counsel, administrative infrastructure, and access to community funds on the other.

The homeowner in such disputes often has limited financial resources, limited access to independent legal representation, and no practical alternative to the Ombudsman process short of expensive litigation. The Ombudsman process exists precisely because this power imbalance is real and because litigation is not a realistic option for most homeowners facing association disputes. The General Assembly recognized this in establishing the office under **29 Del. C. § 2540 et seq.** — the Common Interest Community Ombudsperson Act.

In this context, confidence in the neutrality of the dispute resolution process is not merely a procedural preference — it is essential to the process serving its intended purpose. If homeowners believe the process is structurally weighted against them, they will not use it. A recusal and disclosure framework addresses this not by assuming bad faith, but by maintaining the structural conditions under which trust can reasonably exist.

The Statutory Framework and Confirmed Absence of Conflict Policy

The Common Interest Community Advisory Council is established under **29 Del. C. § 2546**. The statute specifies the council's 18-member composition, its duties, quorum requirements, and meeting frequency. Section **2546(a)(9)** specifically requires:

"The President of the Delaware Bar Association shall appoint 2 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."

This statutory requirement is appropriate — legal expertise in community association law is valuable to the council's advisory function. The council's duties are established under **29 Del. C. § 2546(f)**, which charges the council with advising the Ombudsman on, among other things, the development of conflict resolution procedures (**§ 2546(f)(1)(b)**) and the feasibility of mandatory mediation and alternative dispute resolution (**§ 2546(f)(1)(c)**). The structural concern this paper addresses is not the presence of HOA attorneys on the council, but what the statute does not address: what happens when those attorneys are simultaneously representing association boards in active disputes involving homeowners who have used, or are using, the Ombudsman process.

A thorough review of the text of [29 Del. C. § 2546](#), the Delaware DOJ Ombudsman's publicly available Advisory Council webpage, and all published Advisory Council rosters dating to 2021 confirms the following:

- [29 Del. C. § 2546](#) contains no conflict of interest provision, recusal requirement, or disclosure obligation for Advisory Council members.
- The Delaware DOJ Ombudsman's website contains no published conflict of interest policy or recusal procedure for Advisory Council members.
- No Advisory Council operating procedures addressing conflicts of interest appear in any publicly available council document.

This is not a criticism of any individual. It is a documented structural gap in the statute and in the council's governance framework.

Advisory Council Composition and Documented Overlap

According to publicly available Advisory Council rosters published by the Delaware Department of Justice, one of the attorney members appointed under [§ 2546\(a\)\(9\)](#) has served on the Advisory Council continuously since at least 2021. Across all published rosters reviewed (2021, 2022, and 2023), this member has served as:

- Chair, Collections, Legislation and Processes Committee — the committee charged with advising the Ombudsman on mechanisms to increase assessment collection rates and recommending adoption or amendment of Delaware law governing common interest communities.
- Member, Community Conflict Resolution/ADR Committee — the committee specifically charged with advising the Ombudsman on developing conflict resolution procedures within common interest communities and the feasibility of mandatory mediation and alternative dispute resolution.

In both instances documented in the case study below, Association counsel also served on the Ombudsman Advisory Council in the capacities described above. The Advisory Council rosters are publicly available through the Delaware DOJ website and identify committee assignments for each member.

Case Study: Mallard Lakes Condominium — Two Instances

The following two instances involving the same condominium community in Selbyville, Delaware illustrate the structural dynamic described above.

Instance 1 — Sandy Interest Group (2015–2016)

Following Hurricane Sandy in 2012, a group of substantially damaged unit owners at Mallard Lakes Condominium organized as the Sandy Interest Group and filed complaints with the Delaware Attorney General's Common Interest Community Ombudsman. The complaints were accepted into formal mediation, convened in July 2015 at the Sussex County Administrative Offices in Georgetown, Delaware, by then-Deputy Attorney General Christopher J. Curtin.

In both the mediation and the subsequent litigation, Association counsel also served on the Ombudsman's Advisory Council. The mediation did not resolve the dispute. Due to the statute of limitations, the Sandy Interest Group subsequently filed suit in the Court of Chancery. During the litigation, the Association sought a gag order preventing Sandy Interest Group members from speaking publicly about the dispute. Vice Chancellor Sam Glasscock III denied the gag order. The case ultimately settled.

Instance 2 — Independent Flood Mitigation Research (2025–2026)

In 2025, a Mallard Lakes property owner independently researched government flood mitigation programs and engaged in outreach to county, state, and federal officials about available funding options. After multiple requests to meet with the board were declined, she launched an independent research website and was issued a cease-and-desist letter by the Association.

On August 24, 2025, the property owner filed a formal Internal Dispute Resolution (IDR) request under **25 Del. C. § 81-209**. The board did not respond. On September 23, 2025, she submitted an escalation to the Delaware DOJ Common Interest Community Ombudsman requesting mediation assistance. Eight days later — on October 1, 2025 — the Association filed suit against her in the Court of Chancery (Civil Action No. 2025-1116-DH).

In this matter as well, Association counsel also served on the Ombudsman's Advisory Council — including as chair of the Collections, Legislation and Processes Committee and member of the Community Conflict Resolution/ADR Committee.

The case was settled in May 2026 and the parties agreed to move forward. Two articles published by Spotlight Delaware in March and May 2026 documented the case and its resolution. The case was noted as an early test of Delaware's Uniform Public Expression Protection Act.

The Structural Dynamic

These two instances illustrate a structural dynamic that may arise when Association counsel serving on the Ombudsman's Advisory Council simultaneously represents HOA boards in disputes involving homeowners who use the Ombudsman process — and that the current statute does not address:

- **29 Del. C. § 2546** requires HOA attorneys on the Advisory Council but provides no conflict of interest guidance, recusal mechanism, or disclosure obligation — a gap confirmed by review of the statute and all publicly available council documents.
- Advisory Council attorney members may advise the Ombudsman on mediation procedures and dispute resolution frameworks while representing association boards in matters where homeowners have filed or may file Ombudsman complaints.
- Homeowners who file Ombudsman complaints may not be aware of overlapping relationships between Advisory Council members and parties to their dispute.
- The absence of any recusal requirement means this overlap can persist without any procedural safeguard.

This dynamic does not require any individual to act improperly. The structural concern is that the appearance of impartiality — essential to any dispute resolution process — may be undermined when Association counsel advises both the oversight body and one of the parties appearing before it, with no mechanism to manage that overlap.

Impact on Homeowner Confidence in the Process

In the 2025–2026 Mallard Lakes case, the homeowner's Ombudsman escalation was filed on September 23, 2025. The Association filed suit eight days later. While litigation decisions are ultimately made independently by the parties involved, the sequence may nevertheless affect homeowner perceptions regarding the practical value of the Ombudsman process. A homeowner observing that outcome — an Ombudsman filing followed within days by litigation — may reasonably question whether the process provides meaningful protection.

More broadly, if Delaware homeowners become aware that Association counsel may simultaneously serve on the Advisory Council advising the Ombudsman on dispute resolution procedures, the following consequences may follow:

- Homeowners may decline to use the Ombudsman process, believing it to be structurally weighted against them.

- The deterrent value of the process — its ability to encourage early informal resolution before disputes escalate to litigation — is reduced if homeowners question its independence.
- The communities most in need of accessible dispute resolution — those where power imbalances between individual owners and well-resourced associations are most pronounced — are the least likely to benefit.
- As coastal resilience and infrastructure disputes increase statewide, the loss of homeowner confidence in the Ombudsman process could mean that disputes which should be resolved informally instead escalate to litigation — increasing costs for all parties and for the court system.

Policy Recommendations

The following targeted modifications to **29 Del. C. § 2546** would address the structural gap identified above without significantly burdening the council's composition or function. The goal is not to remove legal expertise from the council — it is to ensure that expertise is provided within a framework that maintains the appearance as well as the fact of impartiality:

Recommendation 1 — Mandatory Recusal Requirement

Amend **§ 2546** to require Advisory Council members who are attorneys to recuse themselves from any council deliberations, policy development, or advisory activities related to matters in which they or their firm are actively representing a party in a dispute before the Ombudsman, or in which a homeowner involved in such a dispute has filed or is known to be considering filing an Ombudsman complaint.

This is a standard conflict management mechanism used in professional licensing boards, judicial conduct bodies, and regulatory advisory panels across Delaware and nationally. It does not remove HOA attorneys from the council — it creates a procedural safeguard when a direct overlap arises.

Recommendation 2 — Disclosure Requirement

Amend **§ 2546** to require Advisory Council attorney members to disclose to the Ombudsman when they or their firm are actively representing a party in a matter involving the Ombudsman process, so that appropriate management of the overlap can occur.

Recommendation 3 — Enhanced Homeowner Representation

Consider whether the current statutory composition under [§ 2546\(a\)](#) provides sufficient homeowner representation relative to attorney and industry representation. The Governor currently appoints three unit owners ([§ 2546\(a\)\(1\)](#)) — one per county. Adding one or more additional homeowner advocate positions would strengthen the council's balance without removing any existing expertise.

Recommendation 4 — Transparency on Council Composition

Require the Ombudsman's office to prominently surface current Advisory Council member affiliations during the complaint filing process, so homeowners can identify any overlaps between council members and parties to their dispute before proceeding. The council roster is currently publicly available but is not surfaced during the complaint process itself.

Conclusion

A review of [29 Del. C. § 2546](#) and all publicly available Advisory Council documents confirms that the statute and council's governance framework contain no conflict of interest policy, recusal requirement, or disclosure obligation. This is a documented structural gap — not a criticism of any individual's conduct.

The Mallard Lakes cases documented here illustrate what can happen when that gap exists in practice. As documented above, in both instances Association counsel also served on the Advisory Council — including on the committee advising the Ombudsman on conflict resolution procedures. The statute as written permits this overlap to exist without any procedural safeguard.

As Delaware's common interest community population grows and coastal resilience pressures increase, the Ombudsman process will be called upon more frequently and by homeowners with higher stakes. Simple, targeted amendments — a recusal requirement, a disclosure obligation, and enhanced transparency — would strengthen the process without disrupting its current structure or removing the legal expertise the statute appropriately requires.

The many Delaware condominium owners who rely on the Ombudsman process as their primary avenue for resolving HOA disputes deserve a pathway that is not only fair in fact but is seen to be fair in structure. Addressing this gap now, before the pressures on the process intensify, is the most effective time to act.

Key Statutory References

- 29 Del. C. § 2540 et seq. — Common Interest Community Ombudsperson Act
- 29 Del. C. § 2544 — Common Interest Community Ombudsperson; powers and duties
- 29 Del. C. § 2546 — Common Interest Community Advisory Council (composition, duties, quorum)
- 29 Del. C. § 2546(a)(9) — Requirement for HOA attorney members
- 29 Del. C. § 2546(f)(1)(b) — Advisory Council duty re: conflict resolution procedures
- 29 Del. C. § 2546(f)(1)(c) — Advisory Council duty re: mandatory mediation/ADR feasibility
- 25 Del. C. § 81-209 — Internal Dispute Resolution (IDR) process
- 25 Del. C. § 81-103 — Common interest community definitions

Supporting Documentation Available Upon Request

- Delaware DOJ Advisory Council webpage — attorneygeneral.delaware.gov/fraud/cpu/ombudsperson/advisory-council/
- Delaware DOJ Advisory Council Rosters — 2021, 2022, 2023 (publicly available)
- Delaware DOJ Common Interest Community Ombudsperson 2024 Annual Report (29 Del. C. § 2544(16))
- Ombudsman correspondence — July 2015 (Sandy Interest Group mediation)
- Spotlight Delaware — 'A condo owner asked the county for flooding help. Her HOA sued.' March 12, 2026
- Spotlight Delaware — 'Sussex HOA, resident settle lawsuit over flooding and speech.' May 21, 2026
- ML Sustainability independent research archive — mlsustainability.godaddysites.com

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