



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

January 28, 2013

Complainant: David Lantzy  
Association: Old Town Station Owners Association  
File Number: 2013-01564

*The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.*

Complaint

Complainant submitted three separate complaints to the Association, utilizing the Association's written process for resolving association complaints from members and citizens. The complaints submitted are as follows:

1. A complaint was submitted to the Association on September 23, 2012 alleging a violation of §55-510.1(A) and (B) and §55-510(F). Complainant alleges the Architectural Committee of the Association held a meeting without notice, took no minutes of that meeting, and provided an update of what appeared to be a meeting at a subsequent board of directors meeting.
2. A complaint was submitted to the Association on September 23, 2012 alleging conflicts related to the Association's Administrative Procedures Manual.
3. A complaint was submitted to the Association on October 19, 2012 alleging that the Association had violated the Common Interest Community Ombudsman Regulations by failing to provide acknowledgement of receipt of the complaints submitted on September 23, 2012.

Complainant also alleges several other possible violations of common interest community laws or regulation in his Notice of Final Adverse Decision. Because no complaint was submitted to the Association about these possible violations and no final adverse decision was made by the association, they will not be considered to be part of the Notice of Final Adverse Decision and will not be part of the Determination rendered by this office.

## Determination

The Office of the Common Interest Ombudsman has reviewed the Notice of Final Adverse Decision. The Complaint related to the Administrative Procedures Manual (Manual) will not be addressed as none of the allegations contained in that complaint are related to possible violations of common interest community laws or regulations. I will note, however, that upon reviewing the Manual and the specific section related to Complaints, the Association has provided misinformation in Section VII, paragraph a by stating that "members of the Association or other citizens of the Commonwealth may complain about actions of the Association which a member or citizen thinks is in violation of the organizing documents of the Association or of the laws of Virginia." The Common Interest Community Ombudsman Regulations (Regulations) do not address violations of the "organizing documents of the Association." The Regulations only contemplate conflicts with common interest community laws or regulations or interpretations thereof by the (Common Interest Community) Board. "Association Complaint" is further defined in the Regulations as

"a written complaint filed by a member of the association or citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with **applicable laws and regulations** (emphasis added)."

The Association is asked to revise its Complaint Procedure so that it correctly reflects the subject matter of complaints to be submitted under the association complaint procedure outlined in the Regulations.

The Complainant's allegation that the association violated §55-510 and §55-510.1 by holding an architectural committee meeting without notice of the meeting cannot be proven and makes the question of whether minutes were subsequently drafted moot. Based on the comments by the Chair of the Architectural Committee included as part of the Association's final adverse decision, it appears the committee circumvented a meeting by dividing up actions that needed to be taken between two of the committee members. An affidavit submitted by the Complainant as part of his Notice of Final Adverse Decision further supports this finding by confirming that at the September 13, 2012 board meeting the Chair did say that she and one other individual had divided up the reports of violations and that the Committee had recommended approval of a waiver. The affidavit provides further information from a November 8, 2012 meeting related to this issue, but because the final adverse decision had already been prepared and forwarded to the Complainant, it is not appropriate to use any information from that later meeting as part of this Determination. Based on the information provided by the Association in its final adverse decision and contained in the Notice of Final Adverse Decision, there is simply not enough evidence to make a determination that an actual meeting was held without notice.

The final complaint alleges that the Association did not provide acknowledgement of the submitted complaints in the seven-day timeframe required by the Regulations. The Ombudsman did not request additional information from the Association regarding this

allegation as one instance of a lack of acknowledgement by an Association upon receipt of a complaint is not sufficient to warrant any further inquiry by the Office of the Common Interest Community Ombudsman. However, the Association should make note of the requirement in the Regulations (18 VAC 48-70-50(4)) that states "the association shall provide written acknowledgement of receipt of the association complaint to the complainant within seven days of receipt." In the event that a Notice of Final Adverse Decision is received in the future and it alleges and proves that no acknowledgement of a complaint was received in the required timeframe, the Ombudsman will view such action as a possible pattern and refer the matter to the Common Interest Community Board for any further action it may deem appropriate

#### Required Actions

The Association has been asked to revise its complaint process to properly reflect the subject matter of complaints submitted through the association complaint process.

The Association is on notice that all meetings must be open to owners. This means that notice must be given in accordance with common interest community law and the governing documents of the Association. No determination could be made from the submitted Notice of Final Adverse Decision as to whether a meeting had truly been held by the Architectural Committee, but any appearance of a meeting without notice is always cause for concern and should be avoided.

The Regulations require written acknowledgement of receipt of the association complaint. While no particular action is required at this time, the Association is on notice that any future instances of lack of acknowledgment will result in a referral of the matter to the CIC Board.

If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Old Town Station Owners Association