



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell  
Governor

June 26, 2013

James S. Cheng  
Secretary of  
Commerce and Trade

Gordon N. Dixon  
Director

Complainant: Grayson Morgan  
Association: Harbor Walk Condominium Association  
File Number: 2013-03240

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated April 25, 2013. The Association provided a response to the Complaint dated May 17, 2013. Complainant submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman and it was received on May 27, 2013.

## Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the NFAD in its entirety. Any additional information submitted by Complainant that was not part of the original Complaint submitted to the Association was reviewed but not utilized in the Ombudsman's determination.

Complainant was cited for several violations by the Association, including violations of Rules & Regulations #3.2(a) and (b) which state that "a. No portion of any Unit (other than the entire Unit) shall be leased for any purpose and b. "Units are to be occupied for single-family residential purposes only." The Association held an enforcement hearing, with the Complainant participating by phone, and found that the Complainant was leasing the unit in violation of the Rules and Regulations and would be assessed \$10/day until the leasing issue was resolved. Issues related to a boat slip owned by Complainant were also raised in the letter providing Complainant notice of violations and the letter providing the outcome of the enforcement hearing but Complainant did not mention the boat slip issue in his complaint to the association so it will not be addressed here.

In his complaint to the Association, Complainant alleges that "no such rule or regulation exists which expressly provides the association with authority to limit occupancy either by number or occupant relationship to one another. As such, this citation is unreasonable per the Virginia Condominium Act §55-79.80:3..." §55-59.80:3 of the *Code*

of Virginia states that “the unit owners’ association shall have the power, to the extent the condominium instruments expressly so provide, to limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of §55-79.51.” (Validity of condominium instruments; discrimination prohibited). Essentially Complainant argues that the Association cannot limit the occupancy of his unit.

In its Final Adverse Decision, the Association acknowledges that the Complainant is now in compliance with Harbor Walk Rules & Regulations 3.2 and that a new lease was provided to the manager with the additional party removed. Complainant had requested rescission of the citation for violation of 3.2(a) and (b) as well as the “fines” he had been assessed in his Complaint to the Association, and the Association did not provide a rescission of either the violation or the “fines” in its Final Adverse Decision.

While the Complainant has alleged that the Association is violating the Condominium Act, the allegation hinges on the condominium instruments and the power those instruments provide to the Association to limit occupancy. Determining the legality of the condominium instruments and whether the condominium instruments have provided the Association the right to limit occupancy is a determination that is not appropriate for this office. As outlined in the Common Interest Community Ombudsman Regulations, this office must determine if the Final Adverse Decision may be in conflict with laws or regulations governing common interest communities. I do not find that the Final Adverse Decision has demonstrated there has been any conflict with the laws or regulations governing common interest communities.

Required Actions

No action is required by the Association as no Determination can be provided by this office.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Harbor Walk Condominium Association, Inc.