



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

June 6, 2014

Complainant: James Knupp  
Association: The Coves at Wilton Creek Owners Association  
File Number: 2014-03469

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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 "October 7, 2013- Revised November 25, 2013 – Revised March 10, 2014." The Association provided an acknowledgement of the Complaint with a letter dated March 17, 2014. By letter dated April 28, 2014, the Association provided its final decision. A Notice of Final Adverse Decision (NFAD) was received by this office on May 22, 2014, within the 30-day timeframe for submission.

## Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the NFAD in its entirety. Nowhere in the Complaint submitted to the Association is there a sufficiently supported allegation that concerns an "action, inaction or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations." (18 VAC 48-70-10) The Common Interest Community Ombudsman Regulations (Regulations) require an Association Complaint to concern such actions, inactions or decisions, and the applicable laws and regulations are those laws and regulations that govern common interest communities. While there were several allegations of violations of the Virginia Nonstock Corporation Act, as well as the Association's governing documents and general civil law in the form of a failure by the Association to fulfill its fiduciary obligations, none of these allegations are appropriate for review by this office nor are they appropriate for submission through the association complaint procedure.

It is the responsibility of this office to determine whether "the final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 VAC 48-70-120) In the submitted NFAD, no such conflict can be found since there was no allegation of any conflict with common interest community laws or regulations. Conflicts

with other forms of state law and governing documents were alleged, but this office has no authority to opine as to whether such allegations are valid.

#### Required Actions

The copy of the Association's complaint procedure that was submitted with this NFAD appears to be inconsistent with the requirements under the Regulations. It appears to reference violations of the Rules and Regulations of the Association as well as Personal Behavior Complaints. It is unclear if the complaint procedure provided was the correct complaint procedure intended to meet the requirements of the Regulations. I would ask that the Association, or its Manager, provide me a copy of an adopted Association Complaint Procedure that meets the requirements of the Regulations within the next two weeks, which would be by **Friday, June 27, 2014**.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
The Coves at Wilton Creek Owners' Association