



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

September 19, 2014

Maurice Jones  
Secretary of  
Commerce and Trade

Complainant: Michael Austin  
Association: Anna Coves Property Owners Association, Inc.  
File Number: 2015-00737

Jay W. DeBoer  
Director

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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 on August 8, 2014. The Association provided a final determination to the Complainant dated August 15, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman August 28, 2014. The Complaint Procedure for the Association was missing from the submitted NFAD, but upon request, the Complainant provided it immediately.

## Determination

This NFAD and the Complaint submitted to the Association largely follow a similar NFAD submitted to this office by another owner in the same Association. Here, the Complainant stated in his Complaint that he was opposed to the use of reserve funds for a beach renovation. He believes that the reserve funds should be used solely for maintenance and replacement of the Association's property and that a referendum, providing an opportunity for owners to vote on the matter, was improper.

The Association viewed the situation in a different light, pointing out that a referendum had been held and a majority of those who responded had voted for the renovation of the beach area. In addition, the Association commented that the Complainant had failed to specifically identify any section of the Virginia Code pertaining to common interest community law, but instead had simply provided a general reference to common interest community law.

As noted in my prior Determination, this office has spoken to both sides of this issue on several occasions. Here, the question is whether the Association is violating common interest community law if it moves forward with its plan to renovate the beach area using money that has been set aside in the reserves. There are very few places in the Property Owners Association (POA) Act, which is the applicable Act in this instance, that refer to reserves or reserve funds, and the only statute that specifically addresses reserve funds is

§55-514.1. As noted in the prior NFAD related to the same topic, I do not find that the Association is in violation of or in conflict with common interest community law or regulations. The reason for this determination is that §55-514.1 only addresses the requirement that an association conduct a reserve study every five years, that it reviews the study at least annually, and makes adjustments as needed to ensure proper reserves are maintained. The provision also requires that if the reserve study indicates a need to budget for reserves, the association budget must include certain key categories in that budget as well as a description of the procedures used for calculating some of those categories.

Nowhere in §55-514.1 is there any language that specifically dictates the manner in which an association must *spend* its reserves. This Code section only requires associations to maintain reserves pursuant to the most recent reserve study. Certainly one may infer that reserve funds are to be used solely for reserve purposes, and specifically for the purposes laid out in the reserve study. But the (POA) Act does not state such, and therefore this office cannot make that leap. I would note, however, that any use of reserve funds in a manner other than the way they were originally intended would likely result in a need to adjust the reserves at the soonest opportunity, to ensure that any future needs for reserve funds will be met.

While this office cannot require it, I would strongly suggest that the Association consider working with an attorney to determine if it is using these reserve funds in a way that comports with the Association's own governing documents and the fiduciary obligations of the board of directors, which serves as a steward of these funds for the entire community.

#### Required Actions

Because no conflict was found with common interest community law or regulations, no actions are required of the Association. A recommendation has been made, but this office cannot enforce that recommendation as it pertains to business law and the governing documents of the Association.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Anna Coves Property Owners Association