



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

March 11, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Patti Robertson  
Association: St. Andrews Place Homeowners' Association, Inc.  
File Number: 2015-02018

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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 January 4, 2013. This error was acknowledged in the Association's response, and based on corrections provided by the Complainant, the Complaint was intended to be dated January 4, 2015. The Association provided a final determination to the Complainant dated January 22, 2015 and the Complainant then submitted her Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 28, 2015 and received January 30, 2015.

## Determination

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not concern common

interest community laws or regulations is not appropriate for submission through the association complaint procedure. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant submitted several numbered complaints to the Association. Several of those complaints were appropriate for the complaint process as they did allege a violation of common interest community law or regulations, and several cannot be addressed in this Determination as there was no allegation of a violation of common interest community law or regulations.

The first complaint was that the Association had failed to renew its registration with the Common Interest Community Board. At the time of the Complainant's submission to the Association, this was true. However, the Association has since renewed its registration.

The second complaint alleged that the Association had failed to provide an explanation of the manner in which money had been spent. No violation of the Property Owners' Association Act was alleged, and therefore no Determination can be provided for this complaint.

The third complaint alleged that the Association had held secret meetings without notice to the owners. These allegations were supported by minutes of those meetings and the Association acknowledged the meetings in its response, stating that "the Board only met to answer the complaints submitted by Complainant." §55-510.1 of the Code of Virginia is very clear that all meetings shall be open to members. Even if the Board is meeting to discuss a complaint, such a meeting should be an open meeting and any member of the association should be given notice and permitted to attend. If the Board must move into executive session for a reason that is explicitly permitted under the Property Owners' Association Act, it may do so, but it must completely and carefully follow the provisions related to open meeting and executive sessions.

The fourth complaint was related to the Board's failure to provide copies of documents evidencing the association's decision to enter into self-management. By the Complainant's own language, it is not clear if such documents even exist. If they do not exist, the Board obviously cannot provide them. The Complainant also requested copies of bylaws that demonstrated the change to self-management, but again, there is no proof these documents exist. No evidence was provided showing that a request for this information had been made, nor was there evidence that if such a request was made that it was made in accordance with the Property Owners' Association Act. The Association's response to this particular issue is unclear – they state that due to pending litigation, they can only provide information after January 2008 when the members voted to self-manage.

The fifth complaint alleged that the Association has improperly denied the rental of property and is forcing owners to sell properties purchased for rental purposes. The Complainant did not allege any violation of common interest community law or regulation, and therefore no Determination of this allegation can be provided.

The sixth complaint stated that the Association has failed to provide accurate disclosure packets, and specifically that the fee for the disclosure packet was incorrect, that the reserve study was not included, that no proof of filing the annual report was included, no amendments to the bylaws were included, no proof of a fidelity bond was included, and the DPOR registration had expired.

The Association charged \$100 for the disclosure packet, which is the maximum amount that can be charged for a packet provided by a self-managed association. The fee is to reflect the actual cost of the preparation of the packet, as outlined in §55-509.7 and is not to exceed ten cents per page. The disclosure packet was 118 pages according to the Complainant, and therefore it is unclear why the maximum amount was charged. The Association provided no explanation of this charge in its response to the Complainant.

While the actual reserve study was not included in the disclosure packet, a summary was included, which is permissible under the Property Owners' Association Act requirements. This office has since been provided a copy of the full reserve study. The Association recently filed its Annual Report with the Common Interest Community Board, so the issue of having a current registration and certificate to file with the disclosure packet is moot.

This office does not have any way to determine if there have been amendments to the bylaws. If there have been amendments, they should be included in the disclosure packet to ensure that any new owner has access to the most recent version of the governing documents of the association. §55-509.5 of the Code of Virginia requires a disclosure packet to contain "A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association." Such governing documents would include any amendments.

Finally, upon reviewing the documents provided, it appears that as of the writing of this Determination, the Association did have an employee dishonesty insurance policy in place, and included proof of such in the disclosure packet, which is sufficient to meet the requirements contained in §55-514.2 and §55-509.5 of the Code of Virginia. The Complainant's allegation is understandable since §55-509.5 requires inclusion the association fidelity bond and does not reference the employee dishonesty policy. However, the actual requirements for insurance, as set forth in §55-514.2 allow for "a blanket fidelity bond *or* employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association..."

The seventh complaint related to §55-510.2 and §55-510, as they pertain to the distribution of information by members and access to association records. However, the Complainant did not actually allege a violation of these provisions of the Property Owners' Association Act, but instead requests a copy of the mailing addresses and phone numbers for the members of the association. No determination can be provided for this portion of the complaint since no violation was alleged.

## Required Actions

The Association cannot meet in executive session unless it has fully complied with the requirements of §55-510 of the Code of Virginia. In addition, a discussion of a submitted complaint is not typically a sufficient reason to move into an executive session, unless the discussion is one that falls under one of the accepted reasons for having an executive session.

The Association is obligated by law to provide access to, or copies of, the books and records of the association. If a request for access to the books and records has been made that fully complies with the Property Owners' Association Act, the Association must provide such access unless the request is to review or obtain copies of any of the documents that may be excluded from such a review. If any of the governing documents have been amended, it is highly unlikely that such amendments would fall under the permissible exclusions, and therefore copies of such amendments should be provided to any owner who requests them. In addition, if the governing documents have been amended, the Association must also include those amendments in any disclosure packet it creates.

The Association is not a professionally managed association and therefore "Any fee (for a disclosure packet) shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet." (§55-509.7 Code of Virginia) The Association is on notice that it cannot arbitrarily charge the maximum amount for the disclosure packet unless it can provide evidence that the actual costs in preparing the packet came to \$100.

The Association must also update its association complaint process to comply with the Common Interest Community Ombudsman Regulations. A complaint form is not sufficient. A copy of an association complaint procedure that fully complies with the Regulations must be provided to this office by Friday, March 27, 2015. The complaint procedure can be mailed to my attention at 9960 Mayland Drive, Suite 400, Richmond, VA 23233, or emailed to me at [cicombudsman@dpor.virginia.gov](mailto:cicombudsman@dpor.virginia.gov).

Any failure to comply with any of these Required Actions will be referred to the Common Interest Community Board for investigation and enforcement, as it deems appropriate.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
St. Andrews Place Homeowners' Association, Inc.