



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

April 2, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Ronald Fiske  
Association: Fox Point Homeowners' Association  
File Number: 2015-02139

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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 20, 2015. The Association held a Consideration of the Complaint on February 2, 2015, and followed that consideration with a final determination dated February 6, 2015. The Complainant submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 19, 2015 and received February 23, 2015. The Notice of Final Adverse Decision was missing from the original submission, but the Complainant was able to provide the form within the 30-day timeframe required by the Common Interest Community Ombudsman Regulations.

## Determination

The Common Interest Community Ombudsman, 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 has alleged that the Association has failed to meet its obligations under §55-510.2 of the Code of Virginia, which requires that the board of directors establish “a reasonable, effective, and free method of communication appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.” The specific allegations are that the owners often work a substantial distance from the association and therefore do not have time to review information in the association office, that posting information on bulletin boards is not effective, that the one-way communication available on the website is only suitable for communicating with the manager and board and does not provide a means of communication between owners, and that the Association is unwilling to research other methods of communication to bring it into compliance with §55-510.2.

The Complainant provides examples of other methods of communication that have been used in the past and are no longer in use, i.e. a newsletter and posting at the clubhouse. The Complainant also references a resolution from 2009 that he alleges restricts how the owners communicate with the board and does not provide a guarantee that the board will respond to any communication. The Complainant emphasizes the failure to provide a reasonable and effective method of communication.

In its response to the allegations contained in the Complaint, the Association stated that “§55-510.2 of the Property Owners’ Association Act is currently satisfied by the Association’s Resolution 2014-01...” The Fox Point Homeowners’ Association Policy Resolution 2014-01, titled “Member Communication Policy,” and outlines the methods by which communication can take place within the Association. Written communications can be submitted to the manager’s office or sent by email, as long as they are signed and include printed name of the member, address, and telephone number. If no response is required from the Association under the governing documents or any applicable law, the communication will be reviewed at the next board meeting and a response provided if appropriate.

Members also have the opportunity to comment during board meetings, at a designated time, as required by common interest community law. Members who are unable to attend a board meeting but wish to have their comments read at the meeting, can submit them in accordance with the Policy Resolution. If a member wishes to have information distributed to the board or other members, such information can be delivered to the manager and the information will be placed on the bulletin board in the clubhouse and in the Community Reading Binder. Copies of the communications are available at no charge if a written request is submitted. All communications must comport with guidelines created by the Association. The guidelines require that contact information be included,

that the communication be association-related, that the communication not contain any inappropriate language or information, and that the Association reserves the right to have an attorney review the communication prior to making it available for viewing by others.

While I can understand the Complainant's desire for the association to create and utilize a method of communication that may track more closely with the technology now available, the Property Owners' Association Act does not specify what does or does not meet the requirements of §55-501.2, and there is no requirement that an association use the newest technology available. In addition, because common interest community law does not define the terms, the decision as to what is "effective" and "reasonable" becomes a purely subjective one. Based on the information provided in the NFAD, it appears that the Association's Policy Resolution 2014-01 is more than sufficient to meet the requirements of §55-510.2 of the Property Owners' Association Act. As long as the Association follows that Policy Resolution, I can find no violation of common interest community law or regulations.

Required Actions

No actions are required.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Fox Point Homeowners' Association