



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

April 9, 2015

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Association  
File Number: 2015-02390

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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 29, 2015. The Association provided a final decision dated February 20, 2015. The Complainant submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 19, 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 has alleged that the Association violated its own bylaws, and several provisions of the Condominium Act by placing five clocks in the common area and then subsequently removing one of those clocks. Specifically, the Complainant alleged that §55-79.68, §55-79.75 and §55-79.48 of the Virginia Code were violated by these actions.

As noted above, this office has no authority to provide a determination regarding anything other than a violation of common interest community law or regulations. Therefore no determination will be provided regarding the alleged violation of the Association bylaws. As to the alleged violations of the Condominium Act, it appears that the Complainant may have misunderstood the application of the particular code sections that he cited in his Complaint.

§55-79.68 relates to alterations within units, by the owner of the unit, not to alterations of the common areas of the condominium by the Association or its manager. As such, this provision is not applicable to the situation outlined by the Complainant in his complaint. §55-79.75 requires notice for all meetings of an association, however, the Complainant has not provided any evidence, other than the fact that the clocks were moved and that such movement was not discussed in a meeting, that a meeting was held without notice. In its response to the Complaint, the Association stated that the manager of the association had been given the authority to "provide for the operation, care, upkeep and maintenance of the common elements..." It appears, based on the response from the Association, that the manager has the authority to place the clocks in the lobby and to later remove one of the clocks, when, according to the Association, it ceased working. Such authority did not require a meeting of the association board of directors. Finally, §55-79.48 simply states that the declaration, bylaws and any amendments "shall be duly executed by or on behalf of all the owners and lessees of the submitted land." This provision has no application to the Complaint submitted to the Association.

While there were several allegations of violations of the Condominium Act in this NFAD, I do not find that there has been a violation of any of the code sections cited in the Complaint.

Required Actions

None.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Association