



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

September 29, 2016

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Lawrence Hertzberg  
Association: Vista Pointe Condominium Owners Association  
File Number: 2017-00583

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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 July 21, 2016. The Association provided a final determination to the Complainant dated August 8, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 15, 2016 and received August 25, 2016.

## 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 is in violation of §55-79.75(B)<sup>1</sup> of the Condominium Act. The Complainant states that owners were not permitted to attend a Board of Directors meeting held May 27, 2016 and that when he asked if he could attend the meeting he was told that he could not. He further states that he was refused a copy of the minutes for the aforementioned meeting. The Complainant also believes that the Association holds work sessions and informal gatherings without notice to the owners.

The Association responded in its final decision by citing the bylaws of the Association and noting that Section 3.8 of the bylaws stated "Notice of regular meetings of the Board of Directors shall be given in writing to each Director, by hand delivery, mail or telegraph, at least three business days prior to the day named for such meeting." The Association further noted that it was exempt from the statutory requirements of the Condominium Act related to meeting notice based on the language of the bylaws.

As has been stated in prior Determinations, this office has no authority to review or interpret the governing documents (or condominium instruments) of an association so no determination as to the applicability of the quoted bylaw provision will be provided. However, the Condominium Act is very clear as to the requirement that notice of all meetings be provided to all unit owners of record. Regardless of any provision in the bylaws, there is an absolute requirement in the Condominium Act that notice be provided and meetings be open to owners. While the bylaws may specify the manner in which members of the board of directors will be notified of meetings, which may be the case here, such notification has nothing to do with the requirement set forth in the Condominium Act that all owners be notified of all meetings and that all meetings be open to all owners.

#### Required Actions

The Association can continue to notify its board of directors of meetings in the manner outlined in its bylaws, but it must also comply with the Condominium Act and provide notice of all meetings to all owners of record. A failure to comply with the Condominium Act and this Determination may result in the referral of this matter to the Common Interest Community Board for possible enforcement.

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<sup>1</sup> Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

I must also note that the complaint procedure provided with the Notice of Final Adverse Decision is not in compliance with the Common Interest Community Ombudsman Regulations, which govern all association complaint procedures. The Association must review the Common Interest Community Ombudsman Regulations and draft a new complaint procedure that complies with those regulations. My office must receive a copy of the new complaint procedure within thirty (30) days of the date of this Determination. In the event that any additional information or guidance regarding the complaint procedure is needed, the Association is encouraged to contact me directly.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Vista Pointe Condominium Owners Association, Inc.