



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

October 28, 2016

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Timothy Mallette  
Association: Fountain Ridge Homeowners' Association  
File Number: 2017-00676

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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

The Complainant submitted a Complaint to the Association dated August 10, 2016. The Association provided a final determination to the Complainant dated August 20, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 7, 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 three violations of common interest community law. The first Complaint was that the Association failed to provide notice of board meetings, either in writing or by placing notice of such meetings as required by §55-510.1<sup>1</sup> of the Property Owners' Association Act. The Complainant also alleged that an amendment to the Declaration of the Association failed to include language regarding a 25% requirement and electronic notice for annual meetings. The third complaint was that the Complainant did not receive copies of minutes that he had requested in June 2016, a violation of §55-510<sup>2</sup> and that contrary to §55-510.1<sup>3</sup> he had not been provided continuous notice of meetings, despite his request for such, as provided by law. In addition to these complaints, there were also several allegations that the Association had violated the bylaws of the association. As is always the case, we have no jurisdiction over such allegations and they will not be considered as part of this Determination.

The Association responded by stating that an email notice was sent out April 3, 2016 and that notice included a letter "advising all members that meetings of the Board of Directors are held bi-monthly on the third Tuesday of the month; location and time is available by calling the President, FRHA at (xxx) xxx-xxxx. We will do this each year in lieu of a sign for each Board meeting."

In response to the allegations pertaining to the amendment, the Association replied that the Complainant had improperly cited §55-510 rather than the correct §55-510.1 of the Property Owners' Association Act. The Association further stated that "there is no requirement in the State Code or the ByLaws for a "25% of all votes appertaining to Members of the Association" with respect to holding meetings of the Board of Directors."

The Association provided the Complainant copies of the requested minutes in its decision. It also noted that the Complainant had not requested continual notice until his August 10, 2016 email and therefore they were not obligated to provide such notice until that date.

The third complaint has been fully addressed by the Association since the minutes were provided to the Complainant and, if the Complainant had not requested continual notification until August, they were under no obligation to provide such notice prior to that date. The Complainant did not provide any evidence that he had requested continual notification prior to August 10, 2016.

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<sup>1</sup> Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

<sup>2</sup> Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association, shall be available for examination and copying by a member in good standing or his authorized agent...

<sup>3</sup> A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the board of directors.

The second complaint did not make complete sense as written. However, because it was related to an amendment to the bylaws, it does not fall under the purview of this office and therefore no Determination can be provided as to whether the association violated common interest community law or regulations when it drafted or adopted the bylaw amendment.

The first complaint does allege a violation of the Property Owners' Association Act. While the Association may be providing a form of notice to the owners, it is not providing sufficient notice of board meetings. The language of the Act is clear, and it states "[n]otice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners." The Association does not appear to be providing the time of the meetings nor is it providing notice of the place of each meeting, and instead, is requiring members to call the President in order to find out the time and location of the board meetings. This method of meeting notification does not meet the notice requirements set forth in §55-510.1 of the Property Owners' Association Act. I would also note that the Association is obligated to provide notice of "the time, date and place" when sending continual notification to owners who have requested such.

#### Required Actions

The Association must adopt a new method of meeting notice for board meetings that fully complies with the Property Owners' Association. This includes ensuring that it provides notice not only of the date of the meetings, but also of the time and location of the meetings. The Association must also ensure that it provides continual notification of meetings to those who request it, and that such notification includes, as required by the Property Owners' Association Act, "the time, date and place" of board of director meetings.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Fountain Ridge Homeowners' Association