



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

July 29, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Association  
File Number: 2016-00121

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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 May 7, 2015. The Association provided a final determination to the Complainant dated June 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 7, 2015 and received July 8, 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 makes a request in his Complaint that the Association provide him certain documents, including minutes, agendas, and names of residents involved in discussions related to the common area lobby and certain decorative clocks. The Complainant does not allege any actual violation of common interest community law or regulations, but instead appears to be requesting this information in order to determine if there has been a violation.

The Association responded to the Complaint on June 8, 2015 with a Notice of Final Determination. In this Determination, the Association stated that it viewed the Complaint as "a request for Association books and records" and that "the complaint procedure is not the proper channel for unit owners to request information from the Association." The Association also raises the fact that the Complainant has previously filed a complaint regarding the same issue on January 29, 2015 and that the Association had provided a Final Determination to that Complaint.

I agree with the Association that the Complaint was not a complaint but instead a request for books and records. In addition it did not "concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations" and therefore was not appropriate for submission through the association complaint procedure.

#### Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Association