



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

May 7, 2014

Complainant: Patti Robertson  
Association: St. Andrews Place Homeowners Association  
File Number: 2014-02966

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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 February 27, 2014. The Association provided a "Complaint Response" to the Complainant dated March 24, 2014. This document appears to have been intended to act as a final determination from the Association. The Notice of Final Adverse Decision (NFAD) was received by this office within the required 30-day timeframe. In addition to the documents required by the Common Interest Community Ombudsman Regulations, the Complainant also submitted a breakdown of the Association's "Complaint Response" and the Complainant's rebuttal of that "Complaint Response." That rebuttal was not considered as part of this Determination, as the Association was not given an opportunity to provide a response to that rebuttal.

## Determination

The Complainant (along with a group of other owners) submitted a complaint to the Association in which they set forth fifteen separate concerns or requests. Each concern, request, or inquiry will be summarized and addressed below, utilizing the numbering system set forth in the NFAD.

1. The officers of the association have failed to follow licensure requirements for common interest community managers.
  - a. No evidence was provided by the Complainant that indicated the officers of the board of directors were anything other than officers or that they

performed any duties other than those required of any officer on a board of directors. As such, there is no requirement that the officers be licensed, even if, as is the case here, the officers are compensated.

2. The Association must have a blanket fidelity policy or employee dishonesty insurance policy as required by §54.1-2346.
  - a. Similar to Number 1, this appears to be a misapplication of the law. §54.1-2346 applies only to licensed managers, not members or officers of the board of directors. The Association noted that it has an umbrella policy for common areas and a fidelity bond as well.
3. The Association must have a Code of Conduct as required by §54.1-2346.
  - a. Again, §54.1-2346 does not appear to be applicable and there is no requirement for a Code of Conduct in this situation.
4. A Disclosure Packet received by Happy Rentals did not comply with the requirements of the Property Owners Association Act as certain required items were omitted (reserve study, current budget, statement of income and expenses, insurance coverage, approved minutes, certification that the Association has filed its annual report with the Common Interest Community Board).
  - a. No sample of the Disclosure Packet was included in the NFAD or the Complaint to the Association, so it is not possible to determine if the packet was in violation of the Property Owners' Association Act.

The Association responded to this inquiry by stating that the disclosure packet was under review and that it had contracted with DLM Architects to perform a Reserve Study, that a Budget and Income Statement would be provided to all members at the annual meeting, that the only insurance provided is for the common areas, not the individual lots, that the approved minutes were available and that the Annual Report had been filed with the Common Interest Community Board (CICB). The Association is current in its registration with the CICB. While we were not provided proof that the Disclosure Packet was incomplete, merely providing copies of documents or making them available at a later date is not sufficient to meet the disclosure packet requirements outlined in the Property Owners' Association Act.

5. The Complainant asked if there has been a review of the financial records and annual budget by a CPA pursuant to §54.1-2346 and the Association's bylaws.
  - a. Again, this is not an appropriate application of this Code Section. In addition, violations of the governing documents are not appropriate for submission through the complaint procedure.
6. The Complainant questioned whether the Association has been issuing 1099s to the compensated officers.
  - a. Alleged violations of Federal Law are not appropriate for submission through the complaint procedure.

7. The Complainant expressed a belief that misinformation had been provided by a board member regarding rental property in the Association.
  - a. Alleged violations of the Federal Regulations are not appropriate for submission through the complaint procedure. (Several requests for documents were also made, but no purpose was provided, which is a requirement under the Property Owners' Association Act.)
8. Complainant asked when the last reserve study was completed.
  - a. The Association has previously stated that it has contracted with a company to have a reserve study completed.
9. A comparison of reserve studies was requested.
  - a. The Association, in its response, stated that no such comparison was available. Associations are only required, pursuant to a request, to provide existing documents and they are not required to create documents to fill any such request for review.
10. Complainant asked how to access the member meeting minutes, financial records, and resale documents.
  - a. The Association provided copies of minutes in its response.
11. A list of delinquent owners was requested.
  - a. Under §55-510 of the Property Owners' Association Act, the Association is not required to provide information that is part of an owner's personal file.
12. A request for notice of board meetings and minutes of all board meetings.
  - a. The Association stated that there had been no special meetings and therefore no minutes were available. It seems this question was misunderstood.
13. Complainant asked if the budget had been adopted pursuant to the 2014 annual meeting.
  - a. The Association responded that last year's (2013) budget was adopted for 2014 since no quorum could be reached.
14. The Complainant asked that an appointed Director be removed, as such appointment appeared to violate the Articles of Incorporation or the Bylaws.
  - a. Violations of the governing documents are not appropriate issues to be raised through the complaint procedure.
15. A request for formation of a nominating committee was made and the President allegedly refused to acknowledge the motion.
  - a. This is a parliamentary issue that may be tied into a violation of the governing documents if a nominating committee is required by the governing documents. This office has no jurisdiction over the governing documents or parliamentary procedure.

### Required Actions

Based on the length of time since a reserve study has been completed, it is imperative that the Association follow through with its plan to carry out a reserve study. I ask that the Association provide my office, within 30 days of the date of this letter, a copy of the contract that it has entered into with DLM so that we can be certain the reserve study will be completed in the very near future. If the contract is still under negotiation, or contains any information that should not be made available under the Freedom of Information Act, the Association is welcome to redact any information it considers in appropriate or, we can discuss this issue by telephone.

The Association needs to review the Property Owners' Association Act, specifically §55-509.5, and ensure that any and all future disclosure packets are accurate and contain the information required by law. I have included a copy of the required Disclosure Packet cover sheet and the Association must make certain that it utilizes the cover sheet and provides all the required information the next time that it provides a disclosure packet for a potential buyer. It is difficult to place a timeframe for compliance on this item, so I will suggest that if this office is provided a copy of a non-compliant disclosure packet in the future, the matter may be referred to the Common Interest Community Board for review and any action it considers appropriate.

Requests for access to books and records must be made in accordance with the Property Owners' Association Act, under §55-510. The language in that provision requires that all such requests be in writing, they must be specific and the request must be for a proper purpose. In the current case, it was not clear if the Complainant provided a proper purpose for the documents that had been requested. As a result, I cannot find that the Association failed to comply with the POA Act. However, the Association must comply with the POA Act when responding to any future requests for access to the books and records, as long as those requests are made in accordance with the law.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
St. Andrews Place Homeowners Association

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**Common Interest Community Board  
VIRGINIA PROPERTY OWNERS' ASSOCIATION DISCLOSURE PACKET NOTICE**

The lot being purchased is in a development subject to the Virginia Property Owners' Association Act. The contract to purchase a lot shall disclose that the lot is located in a property owners' association. The purchaser may have the right to cancel the contract after receiving the disclosure packet and the purchaser may request an update of the disclosure packet pursuant to § 55.509.4 of the Code of Virginia.

Living in a common interest community carries with it certain rights, responsibilities and benefits. Benefits include the right to use common areas, which may include swimming pools, parks, playgrounds and other recreational facilities. In order to finance the operation of the common interest community association, each owner is responsible for and obligated to pay periodic assessments, and if necessary, special assessments to ensure that the financial requirements are met.

Use of common areas, financial obligations of lot owners and other rights, responsibilities and benefits associated with the ownership of a lot in this common interest community are subject to the provisions of governing documents that typically include a declaration, articles of incorporation, bylaws and rules and regulations. These documents are important and should be reviewed carefully prior to purchase.

Some decisions are made by the association board of directors, while other decisions are reserved to a vote of association members. The purchaser is bound by all decisions of the association and the board of directors and the provisions of the governing documents.

Failure to comply with the association governing documents can result in legal action taken against the lot owner. Failure to pay assessments and mandatory fees may result in the association filing a lien and/or lawsuit against the lot owner, foreclosing the lien, and other actions permitted by the governing documents and the Property Owners' Association Act.

Documents and information contained in the disclosure packet describe the basis for living in a common interest community and should be reviewed carefully prior to purchase of the lot.

The Association Disclosure Packet must include the following statements:

- Association name, and if incorporated, the state of incorporation and the name and address of the registered agent;
- A statement of any approved expenditures that require an additional assessment during the current year or the immediately succeeding fiscal year;
- A statement of all assessments and other mandatory fees currently imposed by the association;
- A statement whether there is any other entity or facility to which the lot owner may be liable for fees or charges;
- The current reserve study report (or a summary thereof), a statement of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the governing board for a specified project;
- A copy of the association's current budget (or a summary thereof) and a copy of its statement of income and expenses or financial condition for the last fiscal year available, including a statement of the balance due of any outstanding loans of the association;
- A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;
- A statement setting forth the insurance coverage provided for all lot owners by the association, including any fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
- A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto by the prior lot owner, are not in violation of any of the instruments referred to in this disclosure notice;
- A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;
- A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including, but not limited to reasonable restrictions as to the size, place and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;
- A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;
- A statement indicating any known project approvals currently in effect by secondary mortgage market agencies;
- Certification, if applicable, that the association has filed with the Common Interest Community Board the annual report required by §55-516.1 of the Code of Virginia including the filing number assigned by the Common Interest Community Board and the expiration date of the filing; and
- The association complaint procedure as required by 18 VAC 48-70-60 and pursuant to 18 VAC 48-70-40 and 18 VAC 48-70-50.

The Association Disclosure Packet must include the following attachments, if any:

- A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
- A copy of notice given to the lot owner by the association of any current or pending rule or architectural violation; and
- A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet.