



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

November 10, 2014

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Verne and Hattie Walden  
Association: Spring Hill Condominium Unit Owners' Association  
File Number: 2015-01318

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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 September 3, 2014. The Association provided a final determination to the Complainant dated October 14, 2014 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 25, 2014.

## Determination

The Common Interest Community Ombudsman (CICO), as designee of the Agency 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 submitted a Complaint to the Association that alleged violations, by the Association, of §55-79.75 of the Condominium Act (Act). Among other provisions, this section of the Virginia Code sets forth language that outlines the requirements for holding an executive session during a meeting of the board of directors, as well as the requirement that a designated time period be provided for comments by owners. The Complainant stated that the Association violated this section in several different ways. The Association allowed attendees to speak for a period of time that was longer than the two minutes announced at the commencement of the meeting. The Association permitted an attendee to make defamatory remarks during the comment portion of the meeting, and allowed non-members to speak during the comment period. And, the Board did not go into executive session when sensitive issues were discussed during the comment period.

The Association, in its Final Determination, stated that it is required to have an open forum during the meeting, as set forth in 55-79.75(D) and that there is nothing in the statute that allows only owners to speak. The Association also noted that it cannot control what an individual says during the designated period of time for comment. In response to the Complainant's belief that the Association should have gone into executive session, the Association stated in its reply that it was not obligated to go into executive session, as "the Condominium Act states that the Board "may" convene in executive session." Finally, the Association commented on the time allotted to the speakers, and concluded that it had not enacted a specific rule on time limits, and that the speaker who appeared to have spoken for a longer time than others was interrupted by others, thus extending the time period.

Both the Association and the Complainant may have a misunderstanding of the purpose of an executive session. An executive session is intended to allow an *executive organ* (or any committee or subcommittee of the executive organ), not individuals making comments during the designated comment period, the opportunity to discuss issues that may not be appropriate for discussion in front of all attendees of a board meeting. The Condominium Act, under 55-79.75(C) specifically lays out the topics that may be considered in executive session. The reasons include, among others, discussion of personnel matters; consultation with legal counsel; contract review; and litigation. The topics are limited to ensure that executive organs carry out the bulk of their meeting in an open setting.

There is no requirement that the executive organ convene in executive session if the "open forum" portion of a meeting gets out of hand or if individuals are saying things that might be controversial or inflammatory in nature. The executive organ "may" convene in executive session to discuss particular topics, but the law does not provide for a move into executive session if owners or

attendees of a meeting begin to act in a manner that some may deem inappropriate. In the situation outlined in the Complaint, there is nothing that would indicate the executive organ should have gone into executive session as it was not a member of the executive organ that was making the comments, and even if it had been a member of the executive organ, the comments did not appear to be of a nature that would have fallen under the topics that permit the executive organ to convene to an executive session.

All other issues raised by the Complainant are not related to violations of common interest community law or regulations and thus no determination can be provided. There is no time limit on comments under the Condominium Act and there is no language in the Condominium Act that dictates the nature of comments made during the designated comment period, although the Condominium Act does specify that the time period for comments is intended to "allow unit owners an opportunity to comment on any matter relating to the unit owners' association." There is also nothing in the Condominium Act that precludes a non-owner from attending a meeting and speaking at that meeting. The Act does require the Association to provide the designated comment period to *owners* ("the executive organ *shall* provide a designated period of time..."), but it is silent as to whether such comment period may be provided to anyone other than an owner. The condominium instruments may contain language that would address the issues that do not fall under the Condominium Act. Because this office does not have jurisdiction over the condominium instruments, however, such language cannot be considered as part of this Determination.

#### Required Actions

No action is required by either party to this NFAD.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Spring Hill Condominium Unit Owners Association