



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

November 16, 2016

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Unit Owners Association  
File Number: 2017-01059

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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 October 6, 2016. The Association provided a final determination to the Complainant dated October 21, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 27, 2016 and received the same day.

## 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 violated §55-79.75(B)<sup>1</sup> of the Condominium Act, when, he stated, a member of the board of directors of the association, “yelled at me to leave the meeting in front of several other owners.” According to the Complainant, this was an attempt to “improperly trick and deny me from attending and participating at an open HOA meeting which is a violation of the open meeting requirement of the Va. Condo Act...” The Complainant did say that he stayed for the remainder of the meeting, despite the request from the member of the board of directors.

The Association responded by noting that the Complainant did remain at the meeting until the open portion was adjourned, and that no violation of §55-79.75(B) of the Condominium Act had occurred. The Association also stated in its response that the Complainant had been given the opportunity to speak during the open forum segment of the meeting and that the Complainant had interrupted the President of the Board on more than one occasion when she was speaking, which was what prompted another board member to ask the Complainant to leave.

The fact that the Complainant was present at the meeting is a clear indication that the meeting was open and that notice had been provided. Therefore, I find no violation of the Condominium Act. As to the suggestion from the board member that the Complainant leave the meeting, it seems clear this was spoken in the heat of the moment. This was not an order from the board of directors, no resolution or vote was taken to require the Complainant to leave. This was simply a situation where one person, who happened to be on the board of directors, was speaking his mind. This office does not have jurisdiction over individual board members, or any other owners in the community, instead, we have jurisdiction over the actions of the board as a whole.

#### Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Unit Owners Association

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<sup>1</sup> 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.