



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

September 5, 2017

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: John Ward  
Association: Captains Cove Golf & Yacht Club  
File Number: 2018-00570

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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 July 22, 2017. The Association provided a response to the Complainant dated August 1, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 8, 2017 and received August 18, 2017.

## 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 §55-510(B)<sup>1</sup> of the Property Owners' Association Act by failing to provide an unredacted copy of lender documents upon request. The Complainant stated that there were two loans of \$150,000 and \$225,000 made to the Association, but the Association will not reveal the name of the lender in the loan documents it provided to the Complainant.

In its response, the Association noted that this issue has been ongoing and that the Complainant had hired an attorney in 2015 to attempt to resolve this issue. Per the Association, its own attorney provided "a detailed explanation as to why the Member who made the loan to CCGYC (Association) was within its rights under the condition of the loan document and VAPOAA (Virginia Property Owners' Association Act) guidelines to redact the name of the lender from the copies of the loan documents supplied to you." Under its Notice of Final Determination, the Association did not grant the Complainant the right to see a copy of the unredacted loan documents.

The statutory language in the Property Owners' Association Act is quite absolute. Unless a document or record falls under one of the nine listed exclusions found in §55-510, the Association is required to provide access to all books and records kept by or on behalf of the association. This means that a member in good standing may examine or copy those books or records, or request copies of same. The fact that the Association agreed to provide anonymity to the lender has no bearing here. The Association has a copy of the loan documents in its records, that copy must contain the lender's name, and I can find no reason in the Association's Final Determination to the Complainant, or under the Property Owners' Association Act why the name can or should be redacted. If the Association promised anonymity, that is unfortunate, but the owners in the community should not be denied their right to transparency due to a promise made by the board of directors.

#### Required Actions

The Association must provide the Complainant a copy of the loan documents he requested with no redactions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Captains Cove Golf & Yacht Club

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<sup>1</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...