



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

September 21, 2017

Todd Haymore  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mathias Neumann  
Association: Bluewater Property Owners Association  
File Number: 2018-00773

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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 June 16, 2017. The Association provided a final determination to the Complainant dated August 11, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 31, 2017 and received September 1, 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 alleged a violation of §55-514.2<sup>1</sup> of the Property Owners Association Act and stated that “compliance with §55-514.2 necessitates the use of several separate operating accounts instead of a single checking account...” The Complainant provided some general information from emails, a financial summary, and Treasurer’s Report in support of his allegations and argument.

In its final decision, the Association responded to the Complaint by writing that the association has numerous accounts, and that each one has its own account number. They also wrote that funds are deposited in federally insured banks, funds are not commingled, and that each account is reviewed and balanced by the Treasurer on a monthly basis, and reviewed by the Board on a monthly basis.

The Complainant included additional information in support of his allegations, but because they were not part of the original complaint to the association and thus the association has not had, nor will it be provided, an opportunity to respond, the additional information will have no bearing on this Determination.

While an association is required to abide by §55-514.2(A)(1), if applicable, I believe the Complainant has misunderstood this particular provision. The statute being referenced pertains to the responsibility of an association with a managing agent, not a self-managed association. If an association is managed by a managing agent, the managing agent must ensure that association funds are kept separate from “other assets of the managing agent.” This is not the situation in the present case. The association is not managed by a managing agent and therefore there is no cause for concern that the funds of the association would be commingled with those of a managing agent. As a result, this statute is not applicable to the situation and no violation can be found.

#### Required Actions

No action is required.

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<sup>1</sup> A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution *separate from other assets of the managing agent*. The funds shall be the property of the association and *shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual association basis*. (emphasis added)

You are welcome to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Gillespie".

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bluewater Property Owners Association