



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

July 30, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Harold Kilgore  
Association: Woodlynne Community Association  
File Number: 2016-00175

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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 three complaints to the Association. Two Complaints were dated March 29, 2015 and one was dated March 12, 2015. The Association provided a final determination to all three Complaints dated July 7, 2015 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 15, 2015 and it was received July 20, 2015.

## 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 submitted three Complaints to the Association. One was dated March 12, 2015, and two were dated March 29, 2015. In his March 12 Complaint, the Complainant alleged that the Association intended to provide consideration of his Complaint during an executive session of the board or directors, which would violate §55-510.1(C) of the Code of Virginia.

The Association responded to this allegation in its final determination by stating that the consideration was held in an open meeting of the board of directors.

In the March 29 Complaints, the Complainant alleged that the Association failed to provide a copy of an approved resolution to him, and that the Association failed to acknowledge receipt of his Complaint in seven days as required by the Common Interest Community Ombudsman Regulations.

The Association responded to these allegations by noting that they would be providing the Complainant a copy of the resolution in a timely manner. In addition the Association agrees that the acknowledgement of receipt of the Complaint was not carried out in the required timeframe and that the “Board will ensure that existing complaint procedures will be followed with regard to future complaints.” The Association also provided acknowledgement of the Complaint as well as a date for consideration of the allegations.

Under 18 VAC 48-70-10 an adverse decision is defined as “the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant.” In the current situation, the Association has responded exactly as requested by the Complainant. It held the consideration in an open meeting, it provided an acknowledgment of the Complaint, and it agreed to provide the Complainant with a copy of the requested information. While it does appear that the complaint procedure was not followed precisely, ultimately the Association did ensure that the Complainant received an acknowledgement, consideration and final determination. There does not appear to be anything further the Association can do and as a result, I cannot find an existing violation of common interest community laws or regulations.

Required Actions

No actions are required of the Association, other than those outlined in its own final determination of the submitted complaints.

Sincerely,

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

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Woodlynne Community Association