



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

November 3, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Susan Knobl  
Association: Solaridge Cluster Association  
File Number: 2016-00924

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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 10, 2015. The Association provided a final determination dated September 17, 2015 and the Complainant then submitted her Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 5, 2015 and received October 7, 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) of the 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 two violations of common interest community law in her submitted association complaint. The first allegation is that the Association violated §55-510 (B) and (D) of the Property Owners' Association Act (POAA) by failing to provide copies of requested books and records. The Complainant had requested copies of minutes, treasurer's reports, a financial plan, arborist's report and DRB submissions. The request was made via email. The Complainant was denied copies based on a failure to provide a proper purpose for her request. In her original request she stated that she requested these documents "in order to understand what action the Board has taken in the past year." The Complainant also stated that the Association had demanded a fee for copying, but that a schedule of costs was not presented to her at the time of her request.

In her second Complaint, the Complainant alleges that she was denied access to the method of communication required by §55-510.2 of the POAA. The Association had provided a Google Discussion Group for the owners, and the Complainant received notice that she was no longer permitted to participate in these discussions. The reason for the denied access, according to the Complainant, was that the Association believed she had been disruptive and uncooperative.

In its final decision letter, the Association stated that it found both complaints without merit. The Association reiterated its belief that no proper purpose had been provided and encouraged the Complainant to resubmit her request in a manner that conforms to the law. As to the second complaint, the Association stated that the suspension of posting privileges was a result of inaccurate statements that had been made online regarding certain meetings. The Association also noted that there were other methods of communication available to the Complainant, such as the directory on the association's website where contact information for owners can be found. The Association did reinstate the Complainant's right to receive emails on the site, but her right to post was not.

The Property Owners' Association Act (§55-510) states,

"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..."

Based on the information provided, it appears that the Complainant did provide a proper purpose as part of her request for copies of the books and records and the

Association failed to provide her the documents that she requested, thus failing to comply with §55-510 of the POAA. While §55-510 does not define “proper purpose,” it seems that virtually any purpose an owner might provide that indicates the owner’s interest in the association and demonstrates an effort to educate herself, as in the present case, would be a proper purpose. I believe that when a request for documents is accompanied by an “improper purpose,” it will be glaringly obvious. I do not believe that time has arrived. Requesting access to, or copies of, the books and records “in order to understand what action the Board has taken in the past year” is, in my estimation, a proper purpose.

The subsequent \$100 charge levied by the Association, while potentially valid, is not in this instance, as the Complainant was not provided a copy of the cost schedule when she made her request for copies of the books and records. §55-510.2 is specific and states

“Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) **be provided to such requesting member at the time the request is made.**” (emphasis added)

If the cost schedule had been provided at the time the request was made, and the \$100 was for reasonable costs of material and labor, the Association would have been within its rights to deny the Complainant copies of the books and records if she was unwilling to pay the costs. However, there was no evidence in the Complaint or the Association’s response that a cost schedule was ever provided to the Complainant after she requested copies of the books and records.

Denying the Complainant access to the Association’s discussion group appears to be a denial of a reasonable, effective and free method of communication,” as outlined in §55-510.2 of the Property Owners’ Association Act<sup>1</sup>. While the Complainant still had access to the contact information contained on the website, it appears that the actual method of communication, namely the discussion group, was denied to her. I understand that the Association was concerned that incorrect information was being disseminated, there are more effective and less punitive measure for dealing with the posting of inaccurate information, and these methods would not deny an owner the right to use a method of communication that is available to all other owners.

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<sup>1</sup> The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

### Required Actions

The Association must comply with all provisions of the Property Owners' Association Act. Specifically, the Association must provide copies of the requested documents, unless any of those documents fall under the list of documents that can be excluded pursuant to §55-510 of the POAA. In addition, no charge can be collected at this time for such copies, but in the future the Association may require payment for materials and labor if it has adopted a cost schedule pursuant to the POAA and provides such schedule to the owner requesting copies of books and records. Finally, the Complainant needs to be given the same access to the "reasonable, effective and free method of communication" that all the other owners can access.

Please be aware that violations of the POAA in the future may result in a referral to Investigations and the Common Interest Community Board for whatever action it may deem appropriate. Both the Association and the Complainant may contact me if they have any questions regarding this Determination.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Solaridge Cluster Association