



# COMMONWEALTH of VIRGINIA

December 28, 2015  
Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

Complainant: Christiaan Grootaert  
Association: Thistle Ridge Homeowners' Association  
File Number: 2016-01448

Jay W. DeBoer  
Director

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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 his complaints to the Association on April 15, 2015 and April 16, 2015. The Association provided a final determination to the Complainant dated November 12, 2015 which addressed both Complaints. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 2, 2015 and received November 3, 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 has alleged that the Association violated §55-510.1 (A) and (B) of the Property Owners' Association Act. Specifically, he states that the Association held a meeting on February 3, 2015, and did not provide notice to anyone other than board members, thereby violating the requirement that all meetings be open to all members of record and the requirement that notice be published where it is "reasonably calculated to be available to a majority of the lot owners" (55-510.1(B)). The meeting was called to discuss a letter received from the Complainant's attorney. In addition, the Complainant alleges that the Association also failed to provide proper notice for several subsequent meetings that were held on February 8, 2015, February 22, 2015, March 18, 2015, and April 6, 2015. The Complainant stated that notice of these meetings was sent only to board members and not to all members of record. The applicable portions of the Property Owners' Association Act (§55-510.1(A) and (B))" are as follows:

A. All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55-510.

B. Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors or any subcommittee or other committee thereof conducting the meeting.

In its response the Association stated that it believed no violation had occurred, and noted that the Complainant was present at the February 8, 2015, February 22, 2015 and March 18, 2015 meetings. The Association also stated that the February 3, 2015 meeting was an informal executive session pursuant to §55-501.1(C).

Any meeting of the board of directors that is not open to the members of record and held without notice is a violation of common interest community law, and specifically §55-510.1(A) and (B). It would appear that the Association violated these particular provisions on numerous occasions. No evidence was provided by the Association to suggest otherwise. Under the Property Owners' Association Act, there is no such thing as an "informal executive session." The provisions of the Property Owners' Association Act related to executive sessions are contained in §55-510.1(C) which states

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family

members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

All executive sessions held by a board of directors must comply with the requirements of §55-510(C) and it does not appear that the meeting in question did so. There is no language in the Property Owners' Association Act that provides for informal executive sessions, and in fact, it is clear from the language in §55-510.1(C) that formality is required, at least so far as the subject matter of an executive session and the method by which a board of directors moves into and out of executive session.

#### Required Actions

The Association must comply with the Property Owners' Association Act in all respects, with particular attention to be paid to meetings of the board of directors. All meetings, as required by the Property Owners' Association Act, must be open to all members and proper notice must be given to owners. In addition, all executive sessions must align with the requirements set forth in the Property Owners' Association Act, as well.

A failure to hold open meetings, provide proper notice of meetings, or hold executive sessions that comply with the law may result in a referral of this matter to the Common Interest Community Board for whatever enforcement action it may deem appropriate. You are welcome to contact me if you have any questions regarding this determination.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Thistle Ridge Homeowners' Association