



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

February 19, 2016

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Association  
File Number: 2016-01872

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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 December 1, 2015. The Association provided a final determination to the Complainant dated December 28, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 26, 2016 and received January 27, 2016.

## 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 a front desk employee engaged in "owner tasks" rather than only doing "employee" tasks which he believes may have created a conflict of interest. The Complainant also alleges that a quorum of board members was seen meeting in violation of the Condominium Act shortly before the Association's annual election. The Complainant alleges that the meeting of the board members was a violation of §55-79.75(B) which requires that all meetings be open to all unit owners of record. The Complainant also raised concerns about voting privacy, the bylaws of the association, and the covenants committee. Nothing related to the latter concerns or a possible conflict of interest will be addressed by this Determination as such issues are not appropriate for resolution through the association complaint process. The only allegation that can be addressed is the alleged violation of the Condominium Act.

The Complainant also alleged that the Association violated its own bylaws, which in turn caused it to violate §55-79.48 of the Condominium Act which pertains to the execution of condominium instruments. The Complainant does not provide an explanation, however, as to how the Association violated this provision and therefore the alleged violation cannot be addressed in this Determination.

In its Notice of Final Decision, the Association cited the language of §55-79.41, which defines the term "meeting" as "the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted." The Association stated that the board members standing near one another were not discussing the business of the Association or making decisions, and "the mere fact that they were near one another does not mean that a meeting of the Board occurred."

The Complainant has provided no evidence that the board members were holding a meeting as defined by the Condominium Act. While board members must always be conscious of appearances and the fact that perceptions by other owners may be inaccurate, they cannot, at the same time, be required to never speak to other members of the board in public settings. I cannot find, based on the information provided, that there was a violation of §55-579.75(B) of the Condominium Act.

#### Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Unit Owners Association