



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 7, 2018

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: Larry Robertson  
Association: Peachtree Community Association  
File Number: 2019-00078

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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 a complaint to the Association, dated March 1, 2018. The Association provided a response to the Complainant via email on June 13, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 29, 2018.

## 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 that the Association failed to provide him copies of the books and records that he requested in accordance with §55-510<sup>1</sup> of the Property Owners' Association Act. The Complainant is the authorized agent for the owner of a unit in the association and provided a copy of a Power of Attorney to the Association. The Complainant requested a membership list, an audit report for 2015 and 2016, a Quickbooks update report for 2016 and a January 2018 bank statement.

In its response to the Complaint, the Association stated that it provided a copy of the requested documents. The Complainant disagrees and stated that he did not receive a copy of the 2016 audit nor did he receive a copy of the bank statement, but instead received a copy of a credit card statement. He further commented that the Accountant for the Association stated in a letter (included in the Complaint) that no audit had been completed for 2016, although the Complainant said that he was told by the Association that an audit had been completed. The Complaint also noted that he was given a notice of consideration that contained an inaccurate time for the meeting. The copy of the consideration notice did not seem to support this allegation so it will not be addressed here.

Truly the bottom line in the situation described is that barring a valid reason (as permitted under the law) for not providing books and records, an association must provide them to a member (or his authorized agent) in good standing unless they fall under one of the exclusions listed in the Property Owners' Association Act. The Association has not claimed any acceptable exclusion for not providing the requested books, although it is not clear if they even exist. If no audit was completed for 2016, it cannot be provided. But if one was completed, the Association must provide it to the Complainant. A credit card statement is not the same as a bank statement and therefore the Association did not provide the Complainant what he had requested. The Association must provide the Complainant a copy of the bank statement that he requested, assuming that such bank statement exists.

#### Required Actions

As noted above, the Association must meet its obligations under the Property Owners' Association Act and provide the documents requested by the Complainant, to the extent that such documents exist. **The documents must be provided to the Complainant within 14 days of the date of this Determination, or, if they do not exist, a letter to that effect must be provided to the Complainant, with a copy to this office.**

In addition to the above, I would also like to address the method by which the Association responded to the Complaint. For future reference, the Association must ensure that it fully complies with the laws and regulations governing the complaint process when it responds to a complaint. This means that it must acknowledge receipt of a complaint, provide notice of the time, date and location of consideration of the complaint, and provide a final decision on the complaint. The final decision provided by the Association in the present case contained none of the information required by the

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<sup>1</sup> B. 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 or his authorized agent...

Common Interest Community Ombudsman Regulations (specifically 18 VAC 48-70-50(9)& (10))<sup>2</sup> . Among other things, the Association's registration number was not included, the right of a complainant to file a Notice of Final Adverse Decision with this office was not included, nor was the contact information for this office included. In the event that the Association does not fully carry out its responsibilities in relation to the complaint process in a more complete and fully compliant manner in the future, the matter may be referred to the Common Interest Community Board for whatever enforcement action it may consider appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Peachtree Community Association

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<sup>2</sup> 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.