



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

February 11, 2020

Brian Ball  
Secretary of  
Commerce and Trade

Mary Broz-Vaughan  
Director

Complainant: Maxim Shvedev  
Association: Fort Ellsworth Condominium Apartments Unit Owners Association  
File Number: 2020-01537

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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 August 7, 2019. The Association provided a response to the Complainant dated November 26, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 18, 2019 and received the same day.

## Authority

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 §54.1-2354.4 (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 for that portion of the NFAD.

## Determination

The Complainant alleged eight separate complaints in the complaint submitted to the Association. Of those eight complaints, four were related to common interest community law, which in this case is the Condominium Act. The remaining four complaints were related to the association's governing documents and association policies. Only the four complaints alleging violations of the Condominium Act will be considered in this Determination.

The first complaint alleged a violation of §55-79.75:1(A) (now §55.1-1950(A))<sup>1</sup> of the Condominium Act. The Complainant alleged that the Association failed to establish "a reasonable, effective and free method for unit owners to communicate among themselves and with the executive organ..." The Complainant stated that this "deficiency was brought to the attention of the FE UOA Board of Directors (BOA) on many occasions..."

The second complaint was an allegation that the Association had violated §55-79.75 (now §55.1-1949)<sup>2</sup> of the Condominium Act by transacting business, on January 3, 2019, outside of a public meeting. The Complainant wrote that the Association had transacted business related to the Communications Committee, and had not provided notice of the meeting or minutes. The Complainant said that this meeting was separate from the special meeting held on the same date regarding the management company.

The third complaint also alleged the Association had violated §55-79.75 (now §55.1-1949)<sup>3</sup> of the Condominium Act by failing to provide proper meeting notice. Specifically, the Complainant stated that a seven-day meeting notice was not provided for several Board meetings and that complaints about this were not posted in the minutes. The complaint also alleged a failure to provide him continuing notification of meetings as required by §55-79.75 (now §55.1-1949)<sup>4</sup>.

The fourth and final complaint that will be addressed in this determination alleged that the Association violated §55-79.74:1 (now §55.1-1945)<sup>5</sup> of the Condominium Act by

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

<sup>2</sup> B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent that the condominium instruments or adopted rules expressly provide, send notice by electronic means if consented to by the officer to whom the notice is given. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

<sup>3</sup> 2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

<sup>4</sup> A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

<sup>5</sup> B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners'

failing to provide “documents related to the operation of the Association in response to resident’s requests.” The Complainant stated that the Association has several copies of his requests for records but it has not made those documents available for inspection or copying.

The Association responded to all allegations contained in the complaint, but this determination will only reference those portions of the Association’s final decision that are directly related to the above complaints.

The Association’s first response was to the allegation that the Association failed to have a reasonable, effective and free method for unit owners to communicate among themselves and with the executive board. The Association noted that it holds ‘information sessions’ that include at least two board members, and provide updates on the association and allows for communication with the board members and other owners. The Association also wrote that a variety of social gatherings take place, which allow interaction between owners, and finally, that bulletin boards are available in each building stairwell. The Association believes it has met its obligations under the law in relation to a method of communication.

In response to the allegation that the Association did not hold a public meeting to transact business of the Association, the Association wrote that there was no such meeting on the date referenced by the Complainant and that the only meeting held was the special meeting of the unit owners.

As to the complaint that the Association failed to provide proper notice of meetings, the Association responded that “Section 55.1-1949 of the Act does not establish a time period before which notice of **Board meetings** must be provided...” The Association further noted that meeting notice is provided to all unit owners by posting such notices on the bulletin boards in the community. The Association said that it was not aware of any request by the Complainant to be notified of meetings on a continuing basis, but if the Complainant wishes to obtain such notice, he may request it in writing.

Finally, in response to the allegations that the Association had failed to provide access to the books and records, the Association noted that the complaint did not provide specifics about the requests and that the Association was unaware of the Complainant’s request to inspect and copy the books and records.

To my knowledge, there is not yet a perfect method of communication for associations. Determining what is appropriate for the size and nature of a particular association is outside the scope of our authority since no such definition is provided in the law. Therefore, in most cases, this office can only address whether an association does or

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association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

does not have a viable method of communication and in this case, the Association does have a method of communication, namely the bulletin boards and the various gatherings.

This office has no way of determining whether a meeting was or was not held on a particular day. Because the Complainant alleges a meeting was held without notice and the Association states this was not the case, there is no way for this office to provide a determination one way or the other.

There is no requirement under the law that seven days' notice of board meetings be provided. Instead, the notice is simply required to be "published where it is reasonably calculated to be available to a majority of the unit owners." Based on the information provided, the bulletin boards appear to meet this requirement and therefore no violation can be found. As for the request that the Complainant be notified of meetings on a continuing basis, the Complainant included additional information in his NFAD that seemed to show he had asked for notice on a continuing basis, but this did not appear to have been submitted to the Association as part of the original complaint. I would encourage the Complainant to make this request to the Association in writing, and would ask the Association to ensure that it provides such notice in the future.

Finally, there was nothing in the original complaint that provided evidence that the Complainant had requested copies of records, but there was an email trail from nearly a year ago that was included in the NFAD submitted to this office but did not appear to have been submitted to the Association as part of the original complaint. Since the evidence was not submitted in the original complaint, I would suggest that the Complainant resubmit his records request to the Association and that in turn, the Association, as appropriate under the Condominium Act, provide the requested records.

#### Required Actions

I ask the Association to ensure that it responds in accordance with the Condominium Act to any request for records or notice requested by the Complainant pursuant to this NFAD. The Complainant must also ensure that any such requests are in compliance with the applicable statutes as well.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Fort Ellsworth Condominium Apartments Unit Owners Association