



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

April 11, 2020

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: Robert Sledzaus and James Moran  
Association: Purple Sage Cluster Association  
File Number: 2020-02204

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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 December 17, 2019. The Association provided a response to the Complainant dated February 12, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 15, 2020 and received March 13, 2020.

## 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.

## Determination

The Complainant has alleged that the Association and a representative from a management company that the Association was considering hiring failed to comply with §55.1-1816<sup>1</sup> of the Property Owners' Association Act when three members of the Board of Directors met with that representative. The meeting took place at a board member's home and notice of the meeting was not provided to the association membership. The Complainant believes the Board improperly used an informal work session to conduct the affairs of the association. The Complainant also alleges a violation, by the management company representative, of 18 VAC 48-50-140.1.

In its final decision on the Complaint, the Association stated that "...the purpose for meeting with the prospective managing agent was solely information gathering. No action was intended to be taken on June 5 and no contracts were approved." The Association wrote that the contract they ultimately entered into with the management company was approved in an open session of the board. The Association also noted that "when a quorum of the board meets with prospective vendors it may be construed as a Board meeting" and as a result the Association found the Complaint valid and "reaffirmed its commitment to open meetings and to take care to ensure in the future that when a quorum of a Board gathers with the purpose of discussing Association business that the formalities of a Board meeting be followed including notice and open forum."

Without being present at the meeting, and since the management contract was approved in an open meeting, it is difficult to say whether the three board members were transacting or discussing the business of the Association when they met with the management company representative. The Association has stated that it was merely gathering information but the Complainant believes that the Association was improperly meeting without notice and thus utilizing an informal work session in violation of common interest community law. As stated in the applicable statute, "[a]ll meetings of the board of directors...where the business of the association is discussed or transacted shall be open to all members of record." In the present situation, this office simply cannot determine if the Board of Directors was conducting the business of the association in its meeting, which would most certainly require notice to all members, or simply, as it stated, gathering information from a prospective management company.

Because there is no way to determine what took place in the meeting and exactly what was discussed, it is not possible for this office to provide a determination as to whether the meeting with the management company representative should have been an open meeting for all members and constituted a violation of §55.1-1816.

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<sup>1</sup> A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted 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 § 55.1-1815.

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

While an allegation was made that the representative from the management company was also in violation of §55.1-1816, that statute and the Property Owners' Association Act in general, only apply to property owners' associations (55.1-1801<sup>2</sup>). Therefore, it is not possible for the representative to have violated this statute. The Complainant also alleged a violation, by the representative, of the Common Interest Community Manager Regulations. The portion of the NFAD related to that allegation has been referred to the Complaint Analysis and Resolution Section of the Department for review.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Purple Sage Cluster Association

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<sup>2</sup> A. This chapter applies to developments subject to a declaration initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the Subdivided Land Sales Act (§ 55.1-2300 et seq.).