



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

James B. "Jeb" Wilkinson, Jr.
Director

October 21, 2025

Complainant: Connie Hartz
Association: The Garnett Pointe Lake Condominium Association
File Number: 2025-02357

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

On March 18, 2025, the Office of Common Interest Community Ombudsman ("Office") received a Notice of Final Adverse Decision ("NFAD") from Connie Hartz ("Hartz" or "Complainant"). The NFAD is based on Hartz's complaint to the Garnett Pointe Lake Condominium Association's Board of Directors ("Board") on March 10, 2025. The Board issued a final decision on March 11, 2025. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues Raised

The Complainant raises a single issue in the complaint, specifically that the Board is not complying with the statutory provisions of § 55.1-1949 of the Code of Virginia of 1950, as amended ("Va. Code") with regard to meetings conducted by the Board. In addition, our review of this complaint found deficiencies in the Board's final decision. The Office addresses these issues below.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a “final adverse decision may be in conflict with laws or regulations governing common interest communities.”¹ The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with Va. Code §54.1-2354.4 and the Common Interest Community Ombudsman regulations (“Regulations”). An 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 specifically set forth in the Va. Code and Regulations, must concern whether a decision by the governing board, managing agent, or association conflicts with the “laws or regulations governing common interest communities.”²

Common interest community laws are limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act. Because “laws or regulations” pertain solely to the foregoing laws and the regulations of the Common Interest Community Board’s regulations, the NFAD process is not the forum for raising challenges to an association board’s interpretation, action, or inaction under their governing documents. Any complaint that does not concern common interest community laws or Regulations is not appropriate for submission through the association complaint procedure, and this Office will not provide a determination on such a complaint.

The only documents that will be considered when reviewing an NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision.³ Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal.⁴

If, within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities, we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The determination of the Office is discussed more fully below and is based on a review of the materials submitted with the NFAD. In addition to the single issue raised, the Office noted deficiencies in the Board’s final decision. Each section will address whether the Board’s actions

¹ See, 18 VA. ADMIN. CODE § 48-70-120.

² See, Va. Code § 54.1-2354.3(B) and 18 VA. ADMIN. CODE § 48-70-120.

³ See, 18 VA. ADMIN. CODE § 48-70-90.

⁴ See, Va. Code § 54.1-2354.4(C).

conflict with the applicable common interest laws or regulations, in this case, the Virginia Condominium Act (“VCA”).

1. Requirements for conducting meetings by the association’s board of directors.

Here, the Complainant asserts that the Board is failing to comply with the VCA’s requirements for allowing association members to receive notice of and to attend meetings by the Board. The VCA provides that “[e]xcept as otherwise provided in the condominium instruments, ... [a]ll 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.”⁵ Pertinent to this determination, the VCA further provides that “[t]he executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section.”⁶ Unit owners further have the “right to have notice of any meetings of the executive board, to make a records of such meetings by audio or visual means, and to participate in such meetings in accordance with the provisions of § 55.1-1949.”⁷

In response to Hartz’s complaint, the Board stated that its governing documents give it the right to deny unit owners to participate in the Board’s governance of their community. The Office disagrees. The Board identified no express language in its governing documents that bars it from giving notice to the community’s unit owners, nor does any language prohibit unit owners from attending the meetings of the Board or any of its subcommittees. Instead, the Board takes the position that because its condominium instruments require it to provide notice for both organizational and regular meetings to only Board members, then unit owners are excluded from the governance of their community.

Because this reads more into the condominium instruments than exists in writing in those instruments, this Office finds that the exclusion of unit owners from receiving notice of and attending Board meetings is not within the “except as otherwise provided in the condominium instruments” portion of the VCA. To insert this “phantom” exclusion against unit owners into the Garnett Pointe Condominium instruments would create “work sessions or other informal gatherings of the executive board” that would allow the Board “to circumvent the open meeting requirements” of the VCA. Governance of common interest communities is best conducted in full sunlight, and this Office finds that the Board’s creation of an exclusion of unit owners from the governance of their community where it does not exist deprives unit owners of that right. Accordingly, the Board should immediately make its Board meetings open to unit owners and provide such unit owners with adequate notice of its Board meetings.

⁵ See, Va. Code § 55.1-1949(B)(1).

⁶ *Id.*

⁷ See, Va. Code § 5501-1939.

2. Deficiencies in the Board's final decision.

As noted in the discussion above, the Board's decision issued to the Complainant lacked information that is required to be in its decision responding to a complaint. The details of what is required for an association complaint procedure are laid out in the Common Interest Community Ombudsman's regulations.⁸ Specifically, once the association makes a final determination, it must, within seven (7) days, either hand deliver or send via certified/registered mail with return receipt requested, the written notice. If the association has established procedures for delivery by electronic means, it can send the written notice electronically within seven days if the association retains sufficient proof of the electronic delivery. Also, the association's notice of final determination is required to 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. Further, the association's notice of final determination must clearly inform the association member of their right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsman and provide the CIC Ombudsman's applicable contact information.

Here, the Board's final decision was issued to Hartz via email the day after she filed her complaint. Unless this was incredibly fortunate timing, it suggests that the Board either met immediately to address this complaint, or a Board member who sent the email decision made the decision on their own. The final decision was dated, but only through the Date portion of the email. The final decision email did not, however, state when the Board made its decision. The Board's final decision did include specific citations to the applicable governing documents, laws, or regulations that led to its decisions. But it did not include the Association's registration number or the license number of the property manager, if applicable. Moreover, the Board's decision lacks a statement of the Complainant's right to file an NFAD with this Office. In sum, the Board's decision clearly failed in several aspects to comply with Common Interest Community regulations.

Determination and Required Actions

Based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office makes the following determinations and required actions:

- (1) The Board violated Va. Code §§ 55.1-1949 and 1939 by failing to provide unit owners with notices of its Board meetings and failing to permit their attendance at the same. To correct this, the Board needs to review the applicable statutes cited above to ensure that it is fully compliant with the applicable CIC laws and regulations. This item should be completed within thirty (30) days from the date of receipt this decision; and

⁸ See, 18 Va. Admin. Code § 48-70-50 (9-11).

- (2) The Board's final decision was deficient in several respects in terms of the regulatory requirements, as outlined above. We strongly encourage the Board to correct these deficiencies immediately to ensure that it is compliant with the regulation to meet its obligation to its association members.

If the Complainant is dissatisfied with this determination, or part thereof, the Complainant may seek remedies in civil court.



R. Thomas Payne II, Esquire
Interim CIC Ombudsman

RTP II/bt

cc: Board of Directors, Garnett Pointe Lake Condominium Association