



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

Mary Broz-Vaughan  
Director

October 18, 2021

Complainant: Thomas Jennings  
Association: The Signet Condominium Unit Owners Association  
File Number: 2022-00580

---

*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.*

---

## Complaint

The Complainant submitted a complaint to the Association dated May 28, 2021. The Association provided a response to the complaint dated August 31, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on September 15, 2021.

## 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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

This Determination is final and not subject to further review.

### Determination

The Complainant has alleged that his association is in violation of §55.1-1819 of the Property Owners' Association Act and §55.1-1915<sup>1</sup> of the Condominium Act. Because this is a condominium, the Property Owners' Association Act does not apply and therefore that allegation will not be considered in this determination.

The Complainant wrote that he had placed a freestanding shade on the limited common element deck outside his unit. The Association provided notice that the shade was not approved and that the Complainant needed to submit a request for approval through the Architectural Review Committee. The Association held a hearing regarding the shade and the Complainant alleged that it violated §55.1-1939<sup>2</sup> by prohibiting him from speaking at that hearing. The Association ultimately found the shade unsafe and incompatible with the community.

In his complaint, the Complainant argues that the Association has acted outside its authority as set forth in §55.1-1915. Specifically, the Complainant believes that because there is nothing in the Condominium Act that "bestows powers to regulate

---

<sup>1</sup> A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association or by its executive board or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55.1-1956. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section does not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

<sup>2</sup> Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

4. The right to have (i) notice of any proceeding conducted by the executive board or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § 55.1-1959, and the right of due process in the conduct of that hearing; and

freestanding items in areas reserved for my exclusive use" the Association has no authority to regulate what the Complainant has placed on his deck.

The Complainant also questioned how the Association arrived at its decision and whether the shade is a potential hazard, too large, or incompatible with the Condominium itself. None of these concerns will be addressed in this determination since any such decisions would be based on an association's condominium instruments and not the Condominium Act.

The Association stated that the portion of the Condominium Act that the Complainant referenced regarding his complaint pertains to compliance with the condominium instruments. The Association wrote that the Association's Bylaws "grant the Board the authority to regulate the appearance of Limited Common Elements."

The Association further noted that §55.1-1956 provides it additional authority for its decision as that statute states: "A. Except to the extent prohibited, restricted, or limited by condominium instruments, the unit owners' association shall have the power to:

3. Grant or withhold approval of any action by one or more unit owners or other person entitled to the occupancy of any unit *that would change the exterior appearance of any unit or of any other portion of the condominium...*"

According to the Association, there were also safety concerns regarding the canopy. The Association wrote that "the Board finds its action denying approval for your canopy is fully supported by the condominium instruments and law and as a result did not violate Section 55.1-1915 of the Act."

As to the allegation that the Association was also in violation of §55.1-1939 by failing to allow the Complainant to speak, the Association stated that the meeting referenced by the Complainant was not a hearing where the Association was attempting to enforce rules or regulations, as referenced in §55.1-1939, but instead, was a meeting to consider the application submitted by the Complainant for his canopy.

Based on the information provided in the Notice of Final Adverse Decision, I cannot determine if the association is in violation of §55.1-1915 of the Condominium Act as such determination would be dependent upon information contained in the condominium instruments. Whether those documents give the Association the authority to take action on this canopy issue is not a conclusion this office can determine since we cannot review or interpret the condominium instruments.

As for the alleged violation of §55.1-1939, if, as the Association stated in its response, the meeting was merely to consider the application submitted by the Complainant and not an enforcement action against the Complainant, there does not appear to have been a violation of that statute.

Required Actions

No action is required of the Association.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather S. Gillespie". The signature is fluid and cursive, with a large initial 'H'.

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
The Signet Condominium Unit Owners Association