



# COMMONWEALTH of VIRGINIA

## Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

Brian P. Wofford  
Interim Director

G. Bryan Slater  
Secretary of Labor

September 3, 2024

Complainant: Susan Schultz  
Association: Riverwood II Homeowners Association  
File Number: 2024-0528

### **DETERMINATION - NOTICE OF FINAL ADVERSE DECISION**

#### Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on August 23, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Susan Schultz ("Complainant"). The Complainant initially submitted complaints to the Riverwood II Homeowners Association Board of Directors ("Board") on July 8, 2024, and August 5, 2024; and the Board issued a notice of final decision on August 17, 2024. 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 to be Decided

The issues contained in the complaint submitted to the Board on July 8, 2024, were related to the general maintenance of the Association community and the Association's obligation under its governing documents to carry out those maintenance. Thus, no Common Interest law was implicated, and as a result, the complaint does not fall under our jurisdiction and no determination will be provided regarding that complaint. The complaint submitted to the Board on August 5, 2024, alleges a violation of the Common Interest Community regulations. As explained below, the Office finds that the Board failed to comply with applicable regulations.

#### 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." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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. 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 pursuant to Va. Code § 54.1-2354.4(C).

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

As described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that there is sufficient evidence to conclude that the Board acted in conflict with the applicable regulations only as to the complaint dated August 5, 2024. This determination will address the issue raised by the Complainant as follow.

#### *Board failed to acknowledge the Complainant's complaint in a timely manner:*

The Complainant alleges that the Board failed to acknowledge her complaint in accordance with Regulation 18 VAC 48-70-50. The Complainant states that she filed a complaint with the Board on July 8, 2024, and that the Board failed to acknowledge receipt of the complaint within seven days. The Board issued a final decision on August 17, 2024, but failed to address the Complainant’s allegation that it did not acknowledge receipt of the initial complaint within seven days. In light of that silence, this Office cannot dispute the Complainant’s allegation. The applicable Regulation states in pertinent part:

The association shall provide written acknowledgement of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means

provided the sender retains sufficient proof of the electronic delivery. 18 VAC 48-70-50.

In this case, there is no evidence<sup>1</sup> that the Board sent a written acknowledgment of receipt of the Association complaint to the Complainant within seven days of receipt, neither to the complaint dated July 8, 2024, nor to the complaint of August 5, 2024. Thus, the Board failed to comply with the mandates of 18 VAC 48-70-50.

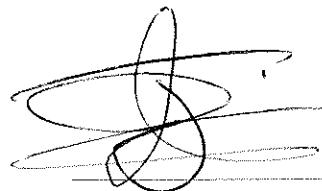
### **Conclusion**

Based upon the information in the record, including the original complaints, its accompanying documents, as well as the NFAD, this Office concludes it has no jurisdiction over the issues raised on the original complaint dated July 8, 2024. (*See, CIC Ombudsman Authority and Limitations: 18 VAC 48-70-130; Virginia Code § 54.1-2354*). As to the complaint dated August 5, 2024, this Office finds that the Board acted inconsistent with the applicable Common Interest Community Regulations.

### **Decision**

Since the issues raised on the complaint dated July 8, 2024, are outside the jurisdiction of this Office, no action is required of the Board on those issues. However, this Office finds the Board did not act in compliance with the applicable regulations regarding its obligation to acknowledge, within seven days, association complaints filed by complainants; and therefore, encourages the Board to fully acquaint itself with the Common Interest Community Regulations so that henceforth, it can ensure it follows the provisions of the Regulations precisely.

If any party is dissatisfied with this determination, or part thereof, the party could seek remedies in civil court.

A handwritten signature in black ink, appearing to read 'Justina Ehiawaguan', written over a horizontal line.

Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors  
Riverwood II Homeowners Association

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<sup>1</sup> Note that the Board later submitted a string of email communications between the Complainant and the Board/Management company, which might have changed the outcome of this determination had the Board address the issue in its final decision.