



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

Brian P. Wolford  
Interim Director

G. Bryan Slater  
Secretary of Labor

August 9, 2024

Complainant: Ebrahim (Abe) Bibizadeh  
Association: Tarleton Oaks At Tallwood Condominium Association, Inc.  
File Number: 2024-02813

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

### Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on June 14, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Ebrahim (Abe) Bibizadeh ("Complainant"). The Complainant initially submitted a complaint to the Tarleton Oaks at Tallwood Condominium Association Board of Directors ("Board") on April 4, 2024, and the Board issued a notice of final decision on May 23, 2024, on the complaint. 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.

In the Complaint, the Complainant raises five major issues: (1) failure to make complaint form available online; (2) failure to allow inspection of books and records; (3) failure to provide advance notice and dates of Board meetings; (4) failure to respond to various concerns; (5) failure to resolve a landscaping issue. As explained below, this Office finds that the Board is not in violation of the applicable law as to issues 1 and 2; the Board did violate the applicable law as to issue 3; and that issues 4 and 5 are outside of its jurisdiction.

### 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 the Board did not violate any of the applicable law as to issues 1 and 2; the Board did violate the applicable law as to issue 3; and that issues 4 and 5 are outside of its jurisdiction. This determination will address each separately.

##### *1. Failure to make complaint form available online.*

The Complainant contends that it would be more convenient and efficient if the Association complaint form was available online, and that it would be easier and faster for all involved to be able to process complaints electronically. The Board, in its response, states that the Association complaint form along with all other forms and documents of the Association are available in its website: tarletonoakscondos.com, and that the website has been functioning since January of 2019. The Virginia Administrative Code requires the association complaint procedure be readily available upon request to all members, and that procedure be attached to the resale disclosure packet. *See*, 18VAC48-70-60.

In this case, there is no evidence to show that the Complainant requested the complaint procedure, and it was not readily available to him. Rather his issue has to do with what he considers more convenient. The relevant statutes and regulations do not impose an obligation that

associations must use the most convenient or preferred availability, only that the complaint form must be readily available. The Board met this requirement, as the Board points out in its response that the complaint form along with other documents are available at its website and have been so since 2019. As a result, this Office finds that the Board did not violate the applicable Regulations.

*2. Failure to allow inspection of books and records.*

The Complainant complains of lack of transparency in financial matters and absence of an independent audit. The Complainant's position seems to be that the Association books and records are not readily available. The Board, in its response, states that the Complainant has not made any request to see the books and records. The Virginia Condominium Act gives unit owners, like the Complainant, access to the association books and records but only upon proper request. *See*, Va. Code §55.1-1945. In this case, the Complainant has yet to make a request, therefore, the Board cannot be found to have violated the applicable law.

*3. Failure to provide advance notice and dates of Board meetings.*

The Complainant asserts that the Board fails to provide adequate advance notice of its meetings. The Complainant states that he requested to be notified in advance and that his request was ignored. In response, the Board points out that every Board meeting is posted at its website. The applicable law mandates the Board or its management company to publish advance notice of meetings "where it is reasonably calculated to be available to a majority of the unit owners." *See*, Va. Code §55.1-1949(B)(2). In this case, the Board states that it publishes its advance notice of meetings on its website; and such notice would have been sufficient if the Complainant had not made a request that he be notified. The applicable law allows a unit owner to make a request to be notified of meetings on a continual basis. Once the request is properly made, the Board is obligated to start sending the unit owner who made the request advance notices through the mail or "by email in case of meetings of subcommittee or other committee of the executive board or a of a subcommittee or other committee of the unit owners' association." *See*, Va. Code §55.1-1949(B)(2).

Here, the Complainant asserts that he made a request to be notified of meetings in advance, and the Board does not dispute his claim. Therefore, the Board is obligated to provide the Complainant advance notice of meetings either via U.S. Mail or email depending on the meeting; or provide an explanation as to why it was not necessary. The Board's failure to honor the Complainant's request constitutes a violation of the applicable law. Accordingly, this Office finds that the Board failed to comply with the requirements of Virginia Condominium Act, Va. Code §55.1-1949(B)(2).

*4. Failure to respond to various concerns.*

The Complainant states that the quality and availability of customer service from the management company has declined. The Complainant adds that he had left multiple messages regarding some issues and that he did not receive any response or follow up. The Complainant did not point to any common interest community law or regulation that the alleged action or inaction violates. Therefore, the allegation or issue of the management customer service is outside

the jurisdiction of this Office. Nevertheless, among the documents the Complainants submitted, the Board in its response to the Complainant, points out that between December 29, 2021, and May 23, 2024, the Complainant had a combined total of 210 interactions through the Association website, management website, and emails. Thus, while the Complainant might not have gotten his desired results, he has received responses to his inquiries, especially considering the Complainant's email to the manager dated April 26, 2024, which states in pertinent part that: "Your prompt and effective approach to addressing issues has always been appreciated."

*5. Failure to resolve a landscaping issue.*

The Complainant alleges that he has been requesting a resolution to a landscaping matter that is in front of his property. The Complainant did not allege a violation of any applicable law nor does the issue falls under the common interest community law, as a result, it is not within the jurisdiction of this Office.

**The Board's Final Decision Failed to Comply with CIC Regulations**

There are areas of concern related to the Board's response to the Complaint. Specifically, the Board did not include the registration number of its Association, the license number of the manager, if applicable, citation to applicable governing documents, laws or regulations that supports its final determination or complainant's right to file NFAD with this Office. The Common Interest Community Ombudsman Regulations require an association's final decision to include, amongst other things, specific citations to applicable association governing documents, laws, or regulations that led to the final determination; the registration number of the association; the name and license number of the manager; and the complainant's right to file a Notice of Adverse Decision with the Ombudsman office as well as the applicable contact information of the Ombudsman office. 18 VAC 48-70-50. Thus, the Board's response is deficient under the Regulations, 18 VAC 48-70-50.

**Conclusion**

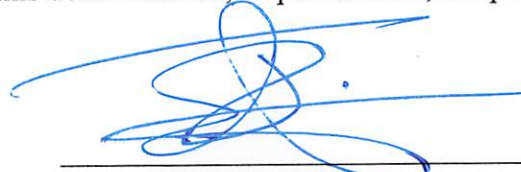
As to the Complainant's allegations, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office concludes that the Board did not violate the applicable law as to complaints 1 and 2. The Office, though, finds that the Board violated the laws and/or regulations as to issue 3. Finally, this Office finds that complaints 4 and 5 are outside its jurisdiction. Additionally, this Office finds that the Board's final determination did not comport with regulations setting forth an association's obligations to cite authorities that support its determination.

**Decision**

As to issue number 3, the Office recommends that the Board honor the Complainant's request to be given advance notice of meetings either through the U.S. Mail or email depending on the type of meetings. Also, this Office encourages the Board to fully acquaint itself with the Virginia Condominium Act's provisions as well as the Common Interest Community Regulations for the contents of its final decisions so that it can ensure that it follows those provisions precisely.

By doing so, the Board can ensure that it includes the necessary information in all its future final decisions.

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



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Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors  
Tarleton Oaks at Tallwood Condominium Association.