



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

G. Bryan Slater  
Secretary of Labor

Brian P. Wolford  
Interim Director

July 16, 2024

Complainant: Aaron Spencer Taylor  
Association: Villas at Peppers Ferry Condominium Unit Owners Association  
File Number: 2024-02143; 2024-02466; 2024-02733; 2024-02734

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

### Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on June 9, 2024<sup>1</sup>, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Aaron Spencer Taylor ("Complainant"). The Complainant initially submitted multiple complaints to the Villas at Peppers Ferry Condominium Unit Owners Association Board of Directors ("Board") on February 12, 2024, March 1, 2024, and May 6, 2024. The Board issued a notice of final decision on May 17, 2024, on all the complaints. 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 Complaints, the Complainant raises five major issues: (1) the Board failed to return a 2023 budget surplus to the community; (2) the Board failed to notify the unit owners of the new insurance policy; (3) the Board violated its fiduciary duty for not providing financial accounting; (4) the Board failed to utilize the proper accounting method; and (5) the Board failed to establish a communication system for members to communicate. As explained below, the Office finds that the Board is not in violation of the applicable law regarding the establishing of a reasonable, effective, and free method for unit owners to communicate among themselves and with the board. This Office finds that it lacks the jurisdiction to address the remaining four issues presented.

### 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

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<sup>1</sup> We addressed all four complaints submitted by the Complainant to our office in this determination.

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 the applicable law regarding provision of a reasonable, effective, and free method for unit owners to communicate among themselves and with the board. The Office further determined that the remaining allegations are outside of its jurisdiction. This determination will address each allegation separately.

#### 1. Board failed to return a 2023 budget surplus to the community:

The Complainant alleges that the Board failed to return a 2023 budget surplus in violation of the Community internal governing documents, which is not under the purview of this Office. The Complainant also states that the failure violated the Condominium Act. The Complainant cites to § 55.1-1904, which deals with association charges, and it states that:

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55.1-2316. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease and desist order pursuant to § 54.1-2352. Virginia Code § 55.1-1904.

There is nothing in the above-cited Code that directs a board to spend budget surplus in a specific way. The Complainant also cites §55.1-1964(D), (H), to show that the Board violated the Code.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55.1-1953, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change. Virginia Code § 55.1-1964(B).

H. Except to the extent that the condominium instruments or the association's rules or regulations provide otherwise, an executive board may impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment or installment. Virginia Code § 55.1-1964(H).

Nothing in the above-referenced Sections of the Code discusses a budget surplus nor how a board should utilize a budget surplus, therefore, this Office cannot conclude that the Board violated Chapter 19 of the Condominium Act, §55.1-1904; §55.1964(D)(H).

2. Board failed to notify the units owners of the new insurance policy:

The Complainant states that the Board made a series of major changes to the Association insurance policy without providing the units owners the required notice. The complainant asserts that this is a violation of Va. Code §55.1-1963(C), which states that:

When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of such obtainment and of any subsequent changes in or termination of the policy shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55.1-1949.

While the above statute requires the Board to promptly provide each owner with notice of any new insurance policy, or changes thereof, there is no indication that the board failed to provide prompt notice to the unit owners. In this case, the Board final decision indicates that the information about the new insurance policy was sent to membership along with the 2023 draft of annual meeting minutes on November 27, 2023. The Board final decision also indicates that another notice of the insurance policy changes was sent to membership on March 1, 2024, and that insurance policies were also uploaded to the Association's AppFolio platform on May 3, 2024. Because the information provided with the Board final decision demonstrates that the board provided prompt notice of insurance policy changes, there is insufficient evidence to find a violation of the applicable law.

3. Board violated its fiduciary duty for failing to provide financial accounting:

The Complainant alleges that the Board was obligated under its bylaws to furnish all unit owners with financial accounting of the common expenses for each fiscal year but failed to do so for the 2023 fiscal year. Here, the Complainant does not allege a violation of the statutes, but rather a violation of the Association's bylaws. The Association bylaws are part of the governing documents of an association, and therefore, is outside our jurisdiction, as this Office has no authority to interpret an association's governing documents.

4. Board failed to utilize the proper accounting method:

The Complainant claims that the association's management company failed to follow the generally accepted accounting practices of fund accounting. The Complainant points out that under the association's bylaws, the accounting of the Association is the responsibility of the treasurer, not the management company. The Complainant then concludes that by delegating the duties of accounting to the management company, the board violated Virginia Condominium Act §§ 55.1-1940; 55.1-1945.

No where was "generally accepted accounting practices" defined or any preferred accounting principles or method specified under Va. Code § 55.1-1940 or § 55.1-1945; nor is there

a prohibition against delegating financial accounting to a managing agent or management company. As a matter of fact, Va, Code §55.1-1945 allows a managing agent to keep records of the association finances, stating in pertinent part that:

The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices. Va, Code §55.1-1945(A).

As shown above, not only is the person specified in the bylaws of the association allowed to handle an association financial accounting, but such work can also be performed by the declarant, or managing agent, as in this case. Indeed, such flexibility is appropriate because not every association in Virginia may be fortunate enough to have an accountant or other professional well versed in generally accepted accounting principles available to serve in such a role. As a result, this Office cannot conclude that the Board violated the Act by delegating its accounting duties to a management company or for not utilizing the "fund" accounting method.

5. Board failed to establish a reasonable, effective, and free method for unit owners to communicate among themselves and with the board:

The Complainant asserts that the Board has yet to establish a communication system that would allow the members to communicate amongst themselves and with the Board. The Complainant points out that such failure is in violation of the Virginia Condominium Act §55.1-1950. This Section of the Code states as follow:

- A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association. Va. Code §55.1-1950(A).
- B. Except as otherwise provided in the condominium instruments, the executive board shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association. Va. Code §55.1-1950(B).

Pursuant to the Code Section above, the Board has the obligation to provide a reasonable, effective and free means of communication for members to communicate amongst themselves and with the Board. Va. Code §55.1-1950(A). The Board claims that the members can communicate with each other using email addresses provide through the website portal, and through bulletin




board on the property's grounds. However, the Complainant asserts that both methods of communication are far from effective and reasonable. Since the applicable law did not define "a reasonable and effective means of communication," this Office is unable to conclude that the Board fails to comply with the mandate of §55.1-1950, of the Virginia Condominium Act. Nevertheless, the Board may want to implement a more accessible and user-friendly methods of communication among the unit owners, as well as with the Board.

### **Conclusion**

Based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office finds that the Board did not violate the applicable law as it relates to providing a reasonable, effective, and free method for unit owners to communicate among themselves and with the board. As to the other allegations, they do not fall within the scope of this Office. (See, CIC Ombudsman Authority and Limitations: 18 VAC 48-70-130; Virginia Code § 54.1-2354).

### **Decision**

This Office finds no violation of the applicable laws on the part of the Board, and therefore no action is required of the Board. If the Complainant is dissatisfied with this determination, or part thereof, the Complainant may wish to consult an attorney about seeking remedies in civil or criminal court.



Justina Ehiawaguan, Esquire  
CIC Ombudsman

cc: Board of Directors

Villas at Peppers Ferry Condominium Unit Owners Association, Inc.