



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Secretary of Labor

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Director

July 29, 2025

Complainant: Joshua Stanfield
Association: Wood Town Quarters Townhouses Owners' Association, Inc.
File Number: 2025-02026

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

On February 14, 2025, Joshua Stanfield ("Stanfield" or "Complainant") submitted a Final Adverse Decision ("NFAD") to the Office of Common Interest Community Ombudsman ("Office") for review. The NFAD is based Stanfield's complaint to the Wood Town Quarters Townhouses Owners' Association, Inc.'s Board of Directors ("Board") on December 18, 2024. The Board issued a final decision on January 16, 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 several issues in his complaint that are properly before this Office, specifically that the Board's: (1) complaint form is not compliant with applicable authorities; (2) failure to establish a reasonable, effective and free method for lot owners to communicate amongst themselves and board members; (3) failure to ensure a board agenda is available for inspection at the same time such agenda is distributed to the Board; and (4) improperly levying an additional assessment. In addition, Stanfield raised two other issues regarding compliance with the provisions of governing documents. Those complaints are not properly before this Office. Stanfield's NFAD complaint also included a "Request for Relief." The Office, though, does not have the statutory authority to order relief, and therefore, such request will not be considered. The Office's determination for the four issues enumerated above are discussed below individually.

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”). 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 CIC 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 CIC 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 NFAD, in accordance with CIC 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 noted above, the Complainant presented four issues in his NFAD complaint. The findings of the Office are discussed more fully below and are based on a review of the materials submitted with the NFAD. Each section will address whether the Board’s actions were consistent with the applicable common interest laws or regulations.

1. Is the Board’s formal complaint process outdated and incorrectly limited to association members?

The first allegation in Stanfield’s NFAD is that the Board’s complaint forms are out-of-date and incomplete in violation of both CIC laws and regulations. Associations are clearly required to develop and adopt complaint procedures for the resolution of written complaints from “the members of the association and other citizens.”¹ The details of what is required for an association’s complaint procedure are laid out in the Common Interest Community Ombudsman’s regulations.²

The Complainant asserts that the Board’s complaint process violates the above authority on two grounds. First, the Board’s complaint process includes reference to the Code of Virginia statutes that have been repealed and moved to a new chapter of the Code. There is no express requirement that an

¹ See, Va. Code § 54.1-2354.4(A) and 18 Va. Admin. Code § 48-70-40.

² See, 18 Va. Admin. Code § 48-70-50.

Association must include current citations to the applicable statutes and regulations, but just as complainants “shall provide” a reference to “the law or regulation applicable to the complaint,”³ the Office believes that it would be a best practice for associations to likewise ensure that citations to applicable laws and regulations are current and accurate.

Similarly, Stanfield drew attention to the fact that the association’s complaint process seems to exclude complaints from “other citizens.” As noted above, the express language of the applicable statute specifies that both association members and other citizens can utilize the complaint process to file a written complaint with an association. A review of the then-current complaint process showed that, in the second paragraph of the first page, the complaint process acknowledges at the beginning that complaints may be filed by either association members or other citizens. But from that point on, the complaint process limits its language to “Members” or “Members or Complainant,” and its complaint form asks for the name of the “Member (Complainant).” In its response, the Board informed Stanfield that it was in the process of revising its complaint process.

In response to a request by the Office⁴, the Board produced a copy of its revised complaint process, which was adopted on February 13, 2025. Our review of the revised and adopted complaint process revealed that all statutory citations have been updated to reference the current statutory citations. The Board also set forth in its procedures, at paragraph 1 on page 1, that “Member or Complainant” referenced an “Association Member or citizen.” Likewise, the instructions on the complaint form state that the form “is available to all Association Owners and Citizens” as required by statute. These revisions serve to reduce the likelihood that a citizen or non-association member at Wood Town Quarters would believe they cannot file a complaint with the Board.

In sum, the Office finds that the prior complaint process met the requirement of Va. Code § 54.1-2354.4 by providing for a written complaint process for members of the association and other citizens. The referenced repealed statutory citations, though, highlights the need for associations to ensure that they, on a periodic basis, review their complaint procedures and the relevant laws and statutes to ensure that the complaint process is compliant with, and cites to, the current authorities. The Board’s effort to review and revise its complaint process upon Stanfield’s complaint is laudable both for the collaborative effort and for making effective revisions and updates that make it clearer that the complaint process is open to both association members and other citizens.

2. Has the Board’s established a reasonable, effective and free method for lot owners to communicate amongst themselves and board members?

The second issue raised by the Complainant is that the Board fails to provide a reasonable, effective, and free method for association members to communicate amongst themselves and with the board of directors.⁵ Homeowners’ associations are required to establish “a reasonable, effective, and

³ *Id.*, at subsection (5).

⁴ The provisions of 18 Va. Admin. Code §48-70-110 allow the Office to request additional information from an association if it will assist in reviewing the association’s final adverse decision. Here, the Office requested the additional information to determine if the Complainant’s concerns had been fully addressed.

⁵ Complainant, in a supplemental document provided to the Office after receiving the Board’s final adverse decision, provided further details on this issue. This Office has long abided by the principle that it will not consider such supplemental information since the Board did not have the opportunity to consider or respond to the information. Therefore, the information in the supplemental production is not properly before the Office.

free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.”⁶ Neither the Code nor the regulations, though, provide specificity on what constitutes a “reasonable, effective, and free method of communication.” The methods used by associations vary widely, from physical bulletin boards to electronic message boards. Here, the Complainant mentioned having to communicate with others through the property manager or other representative.

In its response, the Board stated that Wood Town Quarters maintains a bulletin board for members to use for communication. According to the Board’s response to an inquiry from this Office, association members may contact management which will review the content to ensure the communication is not “illegal or inappropriate,” and it will be posted once it clears review. In addition, the Board also informed the Office that it sends out email blasts and provides access to the Association’s membership directory, a directory that includes members’ email addresses for those who elected to permit the sharing of their information. Further, the Board intends to discuss with its counsel a more convenient and expedient method for communications amongst association members.

In sum, the use of a physical bulletin board may be, in today’s age, somewhat antiquated, but this Office has noted that if the size and nature of an association permits, a physical bulletin board is satisfactory under this statute. We would note, though, that exercising any editorial or restrictions on appropriate communications amongst association members would not be consistent with the provisions of this statute. Lastly, to address an ancillary issue raised by Stanfield regarding having access to contact information for all other lot owners, the Office notes that an association is required by statute to provide such information to an association member under the provisions of Va. Code § 55.1-1815(B)(1).

3. *Did the Board ensure that a board agenda is available for inspection at the same time as such an agenda is distributed to the Board?*

Stanfield next asserts that the Board is in violation of the applicable authorities for board of director meetings by not providing a copy of an agenda for the Board’s October 2024 meeting that followed a special meeting. In pertinent part, Va. Code § 55.1-1816(B) provides that:

Unless otherwise exempt as relating to an executive session pursuant to subsection C, *at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.* (Emphasis added).

In its response, the Board stated that it provided one copy of the “agenda packet and materials” physically available for inspection at the October 2024 meeting. The Board did not, though, state whether the “agenda packet and materials” were provided to association *at the same time such documents* were provided to the Board. Given that Stanfield asserts that a special assessment was part of the meeting agenda and that dozens of association members were in attendance, providing the bare

⁶ See, Va. Code §55.1-1817.

minimum of a single agenda packet and materials for review, while being the minimum for statutory compliance, falls short of the spirit of the statute and of providing good service to association members.

Moreover, while neither party addressed the issue, it seems unlikely that a board agenda packet and materials that contemplated or proposed a special assessment were only provided to the Board at the time of the meeting. Likewise, suggesting that an association member can still review the agenda three months after the Board meeting at which the items were addressed seems to be a case of too little, too late, and falls short of what would likely constitute good governance. The contents of an association board's agenda packet are just as important, if not more so, prior to a meeting than they are three months after a meeting.

The Office cannot conclude that the Board fully complied with the provisions of Va. Code § 55.4-1816(B) because it is not clear that the Board provided at least one copy of the agenda packet and materials to its association members at the same time it provided such materials to its Board members. Certainly, in the future, the Board should ensure that it posts at least one copy of the agenda packet and materials on the community bulletin board (or whatever other effective method it chooses) at the same time it distributes those materials to the Board members. We would also respectfully suggest that, for meetings where a significant turnout is anticipated, the Board provide multiple copies of agendas, paper and/or electronic, as this is an aspect of good governance by assuring members in attendance can fully contribute to the issues presented on the agenda.

4. Did the Board's improperly levy an additional assessment?

The Complainant alleges that because the General Assembly changed the reference to "special assessment" in Va. Code § 55.1-1825 to "additional assessment" during the 2024 session,⁷ that the Board's passing of a "special assessment" as allowed by its governing documents, such action by the Board is in violation of this statute. Typically, if the General Assembly intends for legislation to change the terms of contracts or the terms of land records such as governing documents, the legislation is expressly deemed to be retroactive and/or may contain language that manifests such an intent.⁸ In this instance, the General Assembly replaced "special" with "additional," but it did not appear to make substantive changes or expressly announce that this change carried a retroactive intent or otherwise intended to ban or eliminate "special assessments." Ultimately, this question is beyond the scope of this Office's authority. Instead, it is a civil matter to be addressed by the courts.

Decision and Required Actions

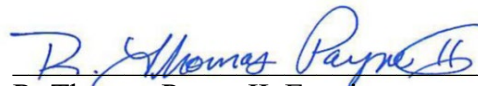
As to the Complainant's complaints, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office makes the following findings and required actions:

⁷ See, Acts of Assembly, 2024 c. 324 (House Bill 1209).

⁸ See, e.g., Va. Code § 36-96.6(A) (General Assembly expressly announces intent to remove discriminatory provisions from restrictive covenants and other documents affecting title to real or leasehold property).

- (1) The Board's prior complaint process met the requirements of Va. Code § 54.1-2354.4 by providing for a written complaint process for members of the association and other citizens. While the statutory references were out of date, the Board has since corrected the form, so no further action is required;
- (2) The Board is not in violation of Va. Code § 55.1-1817 by utilizing a physical bulletin board as a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association. Certainly, a key to satisfying this statutory requirement is to ensure that the method chosen is appropriate given the size and nature of the association. There is no need for any further action by the Board;
- (3) It is inconclusive that the Board fully complied with the provisions of Va. Code § 55.4-1816(B) with the provision of a single agenda packet for the October 2024 meeting because it is not clear that the Board provided at least one copy of the agenda packet and materials to its association members at the same time it provided such materials to its Board members. Accordingly, the Office urges the Board to ensure that it makes the agenda packet and materials available to association members *at the same time* such materials are provided to the Board members. We would likewise encourage the Board to consider providing more than "at least one" agenda packet at meetings it expects to be well attended; and
- (4) The question of whether the change of the statutory language in Va. Code § 55.1-1825 is a question of civil law for the courts to determine.

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


R. Thomas Payne II, Esquire
Interim CIC Ombudsman

RTP II/bt

cc: Board of Directors, Wood Town Quarters Townhouses Owners' Association, Inc.