



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

G. Bryan Slater  
Secretary of Labor

Kishore S. Thota  
Director

November 30, 2023

Complainant: Gabrielle Byrne  
Association: Lakeview of Culpeper Homeowner's Association, Inc.  
File Number: 2024-01153

---

*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 September 15, 2023. The Association provided a response to the association complaint dated October 18, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 13, 2023 and received November 16, 2023.

## 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.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD 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.

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 §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

### Determination

The Complainant alleged that the Association failed to provide her the video footage of an incident at the association's pool regarding her son. She also alleged that behavior of a board member was unprofessional. The Complainant alleged that the Association should have provided her the copy of the requested footage within five days of her request, per the Association's governing documents. The Complainant included a cover letter with additional information, but since it was not part of the complaint submitted to the Association, we cannot consider it.

The Association responded to the allegations by stating that the initial request for the recordings were not in writing, as required by §55.1-1815<sup>1</sup> of the Property Owners'

---

<sup>1</sup> A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

Association Act. Once a written request was made, the Association said it provided the requested records within five days. As to the allegation that a board member allowed a member to view the recording at their home rather than the management office, the Association wrote that this was not a violation of the Property Owners' Association Act, since members can examine the books and records of the association.

The Association also responded to additional complaints that must have been presented at the consideration of the complaint but will not be addressed by this office since all complaints must be in writing and there was nothing in the complaint included with the NFAD that set forth the five additional allegations. In addition, none of the allegations, as provided by the Association, alleged violations of common interest community law.

The Association is correct that any request for books and records of an association must be in writing. In addition, there is no language that requires an association to provide copies of documents or records, but instead, the applicable law (§55.1-1815) only requires an association to allow a member in good standing to examine and copy the records. As a result, there is no deadline for sending copies of books and records, only for providing access to them so that a member can examine or copy them.

It appears that the Association has provided the Complainant the information she sought once it received a written request. Waiting for a written request is appropriate, since the law does require that any request be in writing. As for the allegation that a board member allowed someone to review the recording at their home, there is not enough evidence to allow this office to determine if this was somehow in violation of the Property Owners' Association Act.

#### Required Actions

No action is required of the Association.

---

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Lakeview of Culpeper Homeowners Association

Michelle Yates