



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

February 28, 2013

Complainant: Alex and Susan George  
Association: Fawn Lake Community Association  
File Number: 2013-01864

*The Office of the Common Interest Community Ombudsman has been designated to review Notices of Final Adverse Decision 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

Complainant submitted a complaint to the Fawn Lake Community Association (Association) dated October 22, 2012. The complaint submitted contained numerous allegations, all of which were related to a boat owned by the Complainant and docked on the community lake. The complaint consisted of 28 bullet points related to alleged violations and 9 demands made by the Complainant of the Association. Significant supporting documentation of the complaint and its allegations was provided as well. While the list of perceived violations and demands was considerable, the only allegations that will be addressed in this Determination will be those that may have a basis in common interest community law or regulations, as neither this office nor the Common Interest Community Board has jurisdiction over any other laws or regulations, nor do they have authority over any policies, procedures, rules, resolutions or any other governing documents of any association.

Narrowing the Complaint to only those issues that "may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board," which is the sole area of jurisdiction under §55-530 of the Virginia Code, I find there are three primary complaint issues that fall under the jurisdiction of this office. The first issue is that a committee of the Association is alleged to have had several meetings without notice or without minutes. A September 19, 2011 meeting of the Lake Usage Committee (LUC) is alleged to have had no minutes, an unnoticed email meeting of the LUC was alleged to have been held on an unknown date prior to November 21, 2011, and an unnoticed email meeting was alleged to have been held on December 4, 2011. Board meetings and committee meetings that are not open to all members and are held without notice may constitute a violation of §55-510.1 of the Property Owners' Association Act (POAA).

The Complainant also alleges that its requests for copies of certain books and records were not fully satisfied due to a lack of minutes and an absence of certain emails. A failure to provide access to all books and records kept by or on behalf of the association may be a violation of §55-510(B) of the POAA, unless the requested documents are excluded under the POAA (§55-510(C)).

Finally, the Complainant alleged that the association had not properly implemented a fee schedule for copies of association documents. Such failure to implement a cost schedule may be a violation of §55-510(D) of the POAA.

### Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision (Notice) in its entirety, although only a small portion of the Notice is appropriate for determination by this office. According to the original complaint, a committee of the association may have held a meeting or meetings without notice. Based on the Notice and its accompanying documentation, it is not apparent that any meeting took place that was held without notice. The meetings that were allegedly held without notice appear to have been a series of email communications among members of the LUC rather than actual physical meetings and in one instance the email communications took place over several days. Email correspondence does not constitute a meeting, and as such, I do not find that the association has violated §55-510.

An allegation was made that minutes were unavailable for the LUC meeting held September 19, 2011. I requested a copy of these minutes from the Association and they were provided via email within an hour. In addition, the Association provided me an email (attached) from the Complainant that seems to indicate all LUC minutes had been received in relation to the Complainant's February 13, 2012 request. Clearly minutes were taken, and the Association was under the impression that the Complainant had received a copy of the minutes. In the event that the minutes were not received by the Complainant or have been misplaced, I have included a copy with this Determination.

Nothing in the Complaint leads the OCICO to draw a conclusion that the association has not provided books or records in accordance with §55-510. While the Complainant may not have received all the documents that it had requested, this does not necessarily lead to the conclusion that the association is violating §55-510. Ultimately, the Association has a responsibility to provide access to "all books and records **kept by or on behalf of** (emphasis added) the association." Associations have the authority to determine what books and records will be maintained by the association, as long as those determinations fall within the scope of the POAA and any other applicable law or regulation. Unlike state and federal government, common interest communities do not operate under the Freedom of Information Act, and therefore they do not have an obligation to maintain and ultimately provide copies of virtually every email, letter, summary, or discussion related to the Association. Based on the information provided in the Notice, which includes responses from the Association to the Complainant, it appears that the Association did provide access to the books and records that it kept by or on behalf of the Association. If the

Complainant did not receive all the books and records it requested, it may simply be that those books and records were not part of the Association's files.

Finally, the association was not required by law to have a cost schedule in place for copying books and records of the association. This requirement was not effective until July 1, 2012 and the requests for access to the books and records contained in the Notice were made prior to the July 1, 2012 statutory compliance deadline.

#### Required Actions

While I do not find that the association has violated §55-510 by carrying out a series of email communications, I would caution the association to be very careful in the future about such communications. As is clearly the case here, such email conversations can be construed as meetings and impact perceptions of transparency within the community.

I would note that in reviewing the record of the complaint, I found nothing that indicated the Complainant reasonably identified the purpose for its request to see the books and records of the Association. Such purpose is a requirement under the law and without it, the Association may deny access, although this was not the case here.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Fawn Lake Community Association