



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell  
Governor

July 31, 2013

James S. Cheng  
Secretary of  
Commerce and Trade

Gordon N. Dixon  
Director

Complainant: Michael Thompson  
Association: Kempsville Lake Community Association  
File Number: 2013-03425

*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

Complainant submitted a complaint to the Kempsville Lake Community Association (Association) dated April 24, 2013. The Association responded to Complainant with a Final Decision dated May 28, 2013. The Complainant submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 20, 2013. A copy of the NFAD was forwarded to the Association, as required by the Common Interest Community Ombudsman Regulations, and the Association asked that it be given an opportunity to review the documents to ensure accuracy. The request was granted and the Association contacted this office on July 23, 2013 to confirm the accuracy and to provide additional information.

## Determination

The Office of the Common Interest Ombudsman has reviewed the Notice of Final Adverse Decision. Any additional information submitted by Complainant and the Association that was not part of the original Complaint or Final Decision was reviewed but not utilized in the Ombudsman's determination.

Complainant alleges that the Association has violated the Property Owners' Association (POA) Act by passing a resolution that provides the Association the right to regulate, to some degree, the leasing of property within the Association. Specifically, the Association requires that the owner of a leased property deliver a signed copy of the written lease and lease affidavit to the Association, that the owner pay a processing fee of \$25 each time a lot is leased, and that copies of any legal documents be provided to the Association, among other requirements.

Complainant believes the Association's resolution is not valid and conflicts with §55-513 and §55-509.3 of the POA Act. This issue has been previously litigated in the Circuit Court of the City of Virginia Beach and was appealed to the Supreme Court of Virginia. The appeal was denied for failure to timely pay the filing fee.

Two issues arise in reviewing this NFAD, and result in an inability to provide a determination. The matter at hand has been previously litigated. Any determination provided by this office is nonbinding and therefore would have no impact on the association. The Association and the Complainant must abide by the decision of the Court, regardless of any determination made by this office. The Court's decision would override any determination made by this office as the law, with particularity, states in §55-530(G) of the *Code of Virginia* that any determination "shall not be binding upon the complainant or the association that made the final adverse decision."

The second issue is that in order to provide a determination, this office would be required to interpret the governing documents of the Association. Such interpretation is not within the bailiwick of this office and it would be inappropriate to attempt to provide such a legal interpretation. While the allegations made by the Complainant do relate to possible violations of the law, the only way in which to determine if such violation has occurred is by an extensive review of the governing documents and a subsequent legal interpretation of those documents. This office does not have such authority or jurisdiction and therefore cannot provide a determination for this particular NFAD.

#### Required Actions

No action is required of either party. However, I would caution the Association to be more careful in the future when responding to Complaints. While it appears the Association responded appropriately to the initial Complaint submitted by Complainant, the Final Determination should have also contained information regarding the "complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information (18VAC48-70-50)." This was not included and must be included in all future Final Decisions.

If either party has any questions regarding this determination, you are welcome to contact me.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Kempsville Lake Community Association