



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

July 21, 2014

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Enver Masud  
Association: Southampton Condominium  
File Number: 2015-00038

---

*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 Association dated October 15, 2013. Initially the Association failed to follow the Common Interest Community Ombudsman Regulations (Regulations) when it responded to the submitted Complaint. The Complainant notified this office of the Association's failure to respond and we contacted the Association to ensure the Complaint was dealt with in accordance with the Regulations. The Association provided a Final Determination dated June 26, 2014. The Notice of Final Adverse Decision (NFAD) was received by this Office on June 30, 2014. Additional information was provided with the NFAD that did not appear to have been part of the original Complaint. As is always the case, this additional information was not considered in making providing a Determination for this NFAD.

## Determination

The Office of the Common Interest Community Ombudsman (OCICO) has the authority and responsibility to provide a Determination for Notices of Final Adverse Decision. A NFAD must be filed with the OCICO in accordance with §55-530(F) (Code of Virginia) and the Regulations. In order to meet the requirements of both common interest community law and regulations, all NFADs must evolve from a complaint submitted through an association complaint procedure. The complaint must be submitted in accordance with the 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 pertain to common

interest community laws or regulations is not appropriate for submission through the association complaint procedure. In the event that such a complaint is submitted to this office as part of a NFAD, no determination can be provided.

The Complaint submitted to the Association through its association complaint process contained six separate allegations. Four of those allegations were not appropriate for the complaint process as they alleged violations that were not related to common interest community law or regulations.

The first complaint alleged that the annual meeting package was deficient. Because no content requirement for annual meeting packages is set forth in the Condominium Act, this allegation cannot be defined as a violation of common interest community law or regulation and no determination can be provided.

The second complaint was that the Complainant's candidate statement was not made available to unit owners. Again, as with the first complaint, this is not an issue addressed in the Condominium Act, and therefore is not appropriate for submission through the association complaint process. A determination cannot be provided.

Complaint 3 alleged a continuing violation of §55-79.75 of the Code of Virginia which requires that "at least one copy of all agenda packets and materials furnished to members of the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ." No proof of a violation of this provision was provided, and the Association stated in its final determination that agenda materials were always available for review at each meeting. The Association also noted that in the future it will be posting the agenda packet material to association's website when these packets are distributed to the board members. The Association will also make a hard copy available at the President's home prior to each meeting. Assuming the Association makes good on its intentions, there does not appear to be a conflict with the laws and regulations governing common interest communities.

The fourth complaint alleged a continuing violation of §55-79.75:1 of the Code of Virginia. This provision requires the executive organ to "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 organ regarding any matter concerning the unit owners' association." The Complainant has alleged that the Association has failed to provide a method of communication for owners to communicate with other owners and the board. The Association responded by stating that there is a Facebook page available and that owners can communicate using that site. Upon review, there does appear to be a Facebook page for Southampton Condominium online.

Complaint 5 alleged that a drawing for a free month's assessments was improper and violated the Declaration and the Bylaws of the Condominium. No allegation was made that this drawing violated common interest community law or regulations, only that it violated the Bylaws of the Association, therefore no determination can be provided.

The final complaint states that a catered dinner, served at the election and paid for by a member of the board was announced in the election package that was mailed at the Association's expense. Here, as with other portions of the NFAD, no allegation was made that this was in conflict with common interest community law or regulations, and as a result this allegation should not have been submitted through the complaint process and no determination can be provided.

As previously noted, four of the six allegations contained in the Complaint were not related to common interest community law or regulations. For those allegations, no determination can be provided. Of the two allegations that pertained to the Condominium Act, I do not find that the Final Determination was in conflict with common interest community law or regulations.

#### Required Actions

While there was no conflict with common interest community law or regulations in the Final Determination, I did find that some of the information required by the Regulations was missing. Specifically, the Association failed to provide its Common Interest Community Board registration number and the name and license number of its manager. I fully expect that any future Final Determination will contain this required information.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Southampton Condominium