



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

March 27, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Thomas Gladson  
Association: Sandi Point Condominium Association  
File Number: 2015-02079

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated November 19, 2014. An Addendum to the Complaint was submitted November 24, 2014. The Association responded with a request for additional information dated December 10, 2014 and the Complainant provided the additional information by memorandum dated December 29, 2014. The Association held a Consideration of the Complaint on January 20, 2015, and followed that consideration with a final determination dated January 21, 2015. The Complainant submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 6, 2015 and received the same day.

## Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complaint portion of this NFAD was primarily related to the use of special assessments to complete certain external projects in the association. The Complainant believes the Association is breaching its fiduciary duty by terminating the special assessment before the project is complete and using other funds to complete the remaining portion of the project. The Complainant also alleges that the Association wrongfully and fraudulently received money entrusted to it for the project, and that it is discriminating against the Complainant by not completing all buildings as planned.

The Complainant further states that no bids, contracts, work orders, change orders or invoices were brought to the floor at a meeting, voted on, or approved by the Board. The Complainant also states that withdrawals were made from the Reserve Fund, that minutes did not show these withdrawals and that the Treasurer's Reports are incomplete and impossible to reconcile because they fail to include dates on checks, money from two different associations is deposited in the same account, checks are drawn from the same account for both associations, and the Treasurer's Reports only include one association's financial information.

After submitting the initial Complaint, the Complainant went on to submit an addendum to the Complaint, outlining requested actions or resolutions of the initial Complaint. These actions and resolutions will not be outlined here, as we have no authority to require the association to do anything other than comply with laws or regulations related to common interest communities. The Association requested additional information from the Complainant, and a response was provided which included additional information and issues, however, there were no further allegations of violations of common interest community law or regulations.

The Association provided its final disposition of the Complaint and outlined its opinions on the various allegations. The only two allegations and responses that will be considered here are those related to direct violations of common interest community law, namely §55-79.75 and §55-79.74:1 of the Condominium Act. The Association maintained that §55-79.75, which requires open meetings of the executive organ, does not specify what matters require a vote of the directors. The Association also stated that it obtains bids on work and after negotiations votes to approve bids and that invoices are paid based on those votes.

In response to the allegation that the Association is not maintaining the books and records of the association in accordance with generally accepted accounting practices, the Association stated that it has been maintaining the books and records in the same manner

for many years. It notes that the original invoices, check numbers and dates are maintained by the Treasurer. The Bylaws of the Association require written summaries to be made available – thus the reports provided by the Treasurer. The Association also said that the documents are not intended to be formal.

This was a lengthy and complicated NFAD, but it ultimately came down to only two alleged violations of common interest community law or regulations. The two allegations were that the Association violated §55-79.74:1 by providing Treasurer's Reports and other accounting reports that did not include information the Complainant believed should be reported, and that the Association failed to abide by §55-79.75 of the Code of Virginia by failing to have open meetings and failing to make decisions in open meetings regarding the work that was being done on the siding of the buildings.

It is difficult to conclude, based solely on Treasurer's reports and other accounting reports that an association is failing to maintain the financial books and records in a manner that comports with generally accepted accounting practices. There is simply not sufficient information in such documents to come to that conclusion. The Treasurer may have chosen to not include certain information that is actually available upon inspection of the Association's books and records. A Treasurer's Report cannot be considered to be the only record of the association when it comes to the manner in which financial books and records are maintained.

There do appear to be instances where the Association failed to comply with §55-79.75 of the Condominium Act, and did not hold open meetings. This is particularly obvious in a statement from the Association that acknowledges that it has never been a practice to publicize most committee meeting schedules since they are generally *ad hoc* meetings. The language of §55-79.75 is plain and clear: "All meetings of the unit owners' association or the executive organ, including any **subcommittee or other committee thereof**, shall be open to all unit owners of record."(emphasis added)

Among other allegations in the original complaint and its later amendments, the Complainant asks the Association to alter its budget methodology, especially in relation to another association whose income and expenses are intertwined with those of this Association. The Condominium Act does not specifically speak to the manner in which an association carries out its budget responsibilities, and there are no clear requirements for such. While the allegation made pertaining to this issue was that the Association was violating §55-79.74:1 by not maintaining the financial books and records in a manner that complies with generally accepted accounting practices, there is no definition of the phrase "generally accepted accounting practices" contained in common interest community law or regulations, and the phrase itself is separate and distinct from the commonly used phrase "generally accepted accounting principles" which is a set of principles that was developed by the accounting profession and the Securities and Exchange Commission. Because there is no definition of generally accepted accounting practices, this office cannot make a determination as to whether the Association has violated that portion of the Condominium Act.

### Required Actions

It does appear that the Association may have failed to carry out its obligation to make all meetings open to the owners. The Association must ensure that all future meetings comply with the open meeting requirements of §55-79.75 and that appropriate notice is provided to all owners. If a future NFAD is received that alleges a failure on the part of the Association to hold open meetings, and those meetings occur after receipt of this Determination, the matter may be referred to the Common Interest Community Board for whatever action it may deem appropriate.

Sincerely,

A handwritten signature in cursive script, reading "Heather S. Gillespie".

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Sandie Point Condominium Association