



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

October 18, 2018

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: John Candia  
Association: Inlet Point Homes Association  
File Number: 2019-00860

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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

The Complainant submitted a complaint to the Association, dated January 2, 2018. The Association provided a response to the Complainant dated August 21, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 13, 2018 and received September 17, 2018.

## 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 Complainant alleged in his Complaint that the Association failed to provide him copies of meeting minutes from December 2015 to the present (January 2018). He stated that this was a violation of §55-510(F)<sup>1</sup> of the Property Owners' Association Act (now designated as §55-510 (G) due to amendments to the statute effective July 1, 2018) and §55-510.1(A)<sup>2</sup>. The Complainant provided support for his allegations in the form of several emails to the Association, where he requested the documents, and specifically requested minutes for unannounced meetings between July 2016 and December 2016. In his email, the Complainant noted that the President referred to those particular meetings as "unanimous consent." The requests appeared to comply with the requirements under the Property Owners' Association Act.

In its response to the Complaint, the Association stated that the Complainant failed to follow proper procedure, did not identify the purpose for many requests, and refused to come to the office to inspect and copy books and records. However, the Association did, "in the interest of transparency" provide the Complainant minutes for meeting from December 2015 to January 2018.

In its response, the Association stated that it was providing "minutes for **all** the meetings which fall within the timeframes you specified in your Complaints..." (emphasis added) If the Association has provided all the meeting minutes requested, it has met its obligation under the statute. As to the unanimous consent meetings, I believe that there may be a misunderstanding on the part of the Complainant, based on the emails he included, as to the meaning of unanimous consent and that this may actually reference the right to make decisions via unanimous consent as set forth in the Virginia Nonstock Corporation Act.

### Required Actions

No action is required of the Association.

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<sup>1</sup> G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the member. **Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.**

<sup>2</sup> A. All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55-510.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Inlet Point Homes Association