



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation  
October 26, 2018

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: Robin Mott  
Association: Fairlington Commons  
File Number: 2019-01065

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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 three complaints to the Association, all dated August 13, 2018. The Association provided a final decision to the Complainant that was not dated. The Complainant submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 26, 2018 and received October 5, 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 submitted three separate complaints to the Association. The first Complaint alleged a violation of §55-79.77 of the Virginia Condominium Act. This statute, among other things, pertains to proxies. The Complainant did not specify which portion of the statute she believed applicable. In this same complaint, the Complainant also alleged a violation of a provision in the Bylaws of the Association that addresses the use of proxies. Ultimately, the complaint was related to the use of proxies to obtain quorum in a meeting, and a failure to reach quorum due to the Association's decision not to use proxies submitted by the Complainant.

In its response to this Complaint, the Association said that there was not "sufficient evidence to conclude that you complied with the requirement to file all proxies with the secretary prior to the meeting." According to the Association response, the requirement for filing proxies with the secretary is contained in the Bylaws. The Association also stated that it concluded that it violated neither the Bylaws nor the Condominium Act.

The second Complaint was related to the 2008 election of a board member, an election that the Complainant believed was a violation of the Bylaws of the Association and §55-79.78 of the Condominium Act. As set forth in §54.1-307.1(A)<sup>1</sup> of the Code of Virginia, this agency has a statute of limitations for investigation of complaints. A complaint must be "received by the Department within three years of the act, omission or occurrence giving rise to the violation." Because this second complaint took place ten years ago, no determination can be provided by this office.

The third and final Complaint alleged a violation of §55-79.75:1<sup>2</sup> of the Condominium Act. The Complainant stated that board members have designated themselves administrators of a Facebook account used for community communication. She further stated that the board members delete posts, turn off comments, and block members on the Facebook account.

The Association responded to the third Complaint by noting that in May of 2016 the management company was directed "to establish a website including a "Virginia Condominium Act-compliant board to facilitate communication between Co-owners and the Board." According to the Association, the website and its bulletin board were in place in February of 2017. The Association also stated in its response that the Facebook account was not the official communications method for the Association and therefore moderation of it "cannot constitute a violation of the VCA (Virginia Condominium Act)." The

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<sup>1</sup> A. Except as otherwise provided in § 36-96.9 and subsections B and C of this section, any complaint against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title or any of the programs which may be in another title of the Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be investigated by the Department, shall be made in writing, or otherwise made in accordance with Department procedures, and received by the Department within three years of the act, omission or occurrence giving rise to the violation. Public information obtained from any source by the Director or agency staff may serve as the basis for a written complaint against a regulant.

<sup>2</sup> A. The executive organ shall 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.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

Association also wrote that it is taking steps to “clarify the purpose and function of the Facebook page as compared to the community website and forum...”

I do not find any violation of the Condominium Act in the first Complaint and if the Association has violated its Bylaws, we do not have the jurisdiction to make such a determination. As was noted earlier, the statute of limitations for the second Complaint has long passed and therefore we have no authority to consider that complaint or provide a determination regarding that complaint. The third Complaint does not appear to allege a violation of the Condominium Act since it appears, based on the Association’s response and the two separate websites I found on the internet, that the Facebook page is not the official webpage of the Association and is not intended to be its official method for fulfilling the requirements under the Condominium Act for a method of communication.

#### Required Actions

No action is required of the Association, other than to ensure that any future final decision contain the date of the decision which is a requirement under the Common Interest Community Ombudsman Regulations<sup>3</sup>.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Fairlington Commons

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<sup>3</sup> 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.