



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

January 7, 2019

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: Dale Conlan  
Association: Chincoteague Bay Trails End  
File Number: 2019-01565

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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 September 20, 2018. The Association provided a response to the Complainant dated November 15, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 3, 2018 and received December 13, 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 that the Association failed to provide due process when it sent him a “Notice Not to Trespass” on association property. According to the notice document, it would remain in effect until a protective order against an employee of the association was lifted or had expired. The Complainant alleged that this Notice violated the VAHAA and TE due process policy. It is not clear what the VAHAA is and this office would not have jurisdiction over any association policy that might exist. A letter from an attorney for the Complainant was included with the NFAD and that letter referenced §55-513 of the Property Owners’ Association Act, which requires that an association provide due process to a member in certain instances. §55-513(B) and (C)<sup>1</sup> appear to be the applicable statutes in this situation.

In its response to the Complaint, the Association simply stated that it determined no action was necessary.

The Notice of Trespass given to the Complainant is not a matter that would fall under §55-513 of the Property Owners’ Association Act, since it is not suspension for a failure to pay assessments as authorized in §55-513(B). In addition, paragraph C states, “[b]efore any action authorized in this section is taken...” The action taken was not an action authorized in that section and therefore the due process required by this statute is not applicable. Because the action taken is not one that falls under the Property Owners’ Association Act or any other common interest community law, this is a civil law issue and therefore I do not find that there has been a violation of §55-513 as alleged in the Complaint.

### Required Actions

No action is required of the Association as it pertains to the allegations contained in the association complaint. However, the Association failed to provide a final determination that met the requirements of the Regulations. Specifically, the Association failed to include

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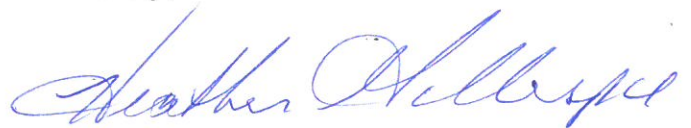
<sup>1</sup> B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55-510. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

citations to any applicable laws or regulations that led to the final determination, the registration number of the association, the name and license number of the common interest community manager (if applicable), the complainant's right to file a Notice of Final Adverse Decision, or the applicable contact information for filing a Notice of Final Adverse Decision. All these requirements are set forth in the Regulations. The Association is on notice that it must include this information in any future response to a complaint submitted through the Association Complaint Procedure. A failure to include this required information may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Chincoteague Bay Trails End