



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

October 20, 2020

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: A. Spencer Taylor  
Association: Condominium Unit Owners Association of Villas at Peppers Ferry  
File Number: 2021-00645

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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 July 10, 2020. The Association provided a response to the Complainant dated August 24, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 4, 2020 and received September 15, 2020.

## Authority

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 §54.1-2354.4 (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.

### Determination

The Complainant has alleged that Association violated 55.1-1955(A)<sup>1</sup> of the Condominium Act by using association funds to pay for repairs in private condominium units. The allegation includes a reference to the Association’s condominium instruments, to demonstrate that the declaration and bylaws do not contain exceptions that would render the statute inapplicable.

The Complaint focused on the repair, by the Association, of four toilets in two individually owned units after it was found that the water bills for the condominium buildings where these units were located were much higher than usual and an investigation revealed the source of the water usage was faulty toilets. The Complainant also alleged a failure to adhere to the Bylaws of the association when this decision to have the association pay for the repairs was made.

The Association responded to the allegations by removing the \$176 charge from the association’s accounts. According to the Association, this means that “no association funds were spent to repair toilets inside the two units...”

While it appears that the Association may have improperly used association funds to pay for repairs to items that are not common elements, this is a situation where this office must weight in carefully, as the statute that applies is dependent, in part, upon the condominium instruments. This office has no authority to review or interpret governing documents of an association. However, since the Association did not raise the condominium instruments in its response, I will conclude that they play no role in this matter. As such, it does appear that the Association did violate §55.1-1955 by paying for the repairs out of association funds. However, it also appears that the Association rectified this situation by removing the charges from the accounts as evidenced by the “Expense Detail” statement included with the final decision.

It is not clear to me how the Association removed the charges and who ultimately paid for them. The Complainant mentioned in his NFAD that someone made an

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<sup>1</sup> A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities.

anonymous donation to the association and these funds were used for the payment. It is not, however, up to my office to determine where the funds came from to pay for the toilet repairs, instead it is up to my office to determine if there was a violation of common interest community law, based on the information contained in the original complaint submitted through the association complaint process.

#### Required Actions

While the Association did violate common interest community law by using association funds for the repair of private toilets, the Association also rectified this by removing those charges from the books and ensuring that they were not paid for with association funds. The Association needs to ensure going forward that it does not misuse association funds and that it fully complies with the Condominium Act.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Heather Gillespie".

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Condominium Unit Owners Association of Villas at Peppers Ferry