



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

Mary Broz-Vaughan  
Director

February 11, 2021

Complainant: James Jackson  
Association: Cedar Lakes Condominium Association  
File Number: 2021-0101593

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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 November 8, 2020. The Association provided a response to the association complaint dated December 7, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 5, 2021 and received the following day.

## 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.

Determinations issued by the CICO are based solely on the association complaint submitted to the association, the final decision or determination from the association, and any documents that were part of the original association complaint or the association's decision. New information that was not included with the original complaint or the association's final decision will not be reviewed or utilized as part of the determination, unless such information is related to the way in which an association carried out its complaint process.

### Determination

The Complainant raised four concerns in his complaint to the Association. The first complaint alleged a failure to carry out a reserve study, as required by §55.1-1965<sup>1</sup>. The Complainant stated that the last reserve study was begun in 2015 and the final document was received in 2016. The Complainant believes that because the reserve study was essentially completed in 2015, a new reserve study should have been carried out in 2020.

The second complaint alleged that the Association failed to provide parking passes to the Complainant in his capacity as a representative for several unit owners whose units he manages. The Complainant alleges that this is a violation of §55.1-1962<sup>2</sup> of the Condominium Act. Specifically he believes that this law allows a professional licensed under §54.1-2106.1 the authority to act on behalf of unit owners that he represents.

The third and fourth complaints were related to FHA certification of the association and the application of Robert's Rules of Order. Neither of these complaints is appropriate for the complaint process as they are not related to violations of the Condominium Act or any other common interest community law or regulation.

In its response to the allegation that it should have carried out a reserve study in 2019, the Association wrote that "[t]he previous Reserve Study was dated for the fiscal year 2016, the next Reserve Study is budgeted and planned for 2021." The Association further noted that a reserve study had not been budgeted for 2020.

In response to the second complaint, alleging a violation of §55.1-1962, the Association stated that "you were offered assistance when you first asked and were subsequently issued parking permits after you provided the required leases..."

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<sup>1</sup> B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900;

<sup>2</sup> Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

The Condominium Act does not specifically address how one must determine when the five years between reserve studies begins and ends. In the present situation, the Complainant believes that because the bulk of the work on the reserve study was completed in 2015, the next reserve study should have taken place in 2020. The Association differs in its view and applies the 2016 date of the final reserve study to the equation, which results in the need to complete the next reserve study in 2021. Based on the information provided with the NFAD, I believe that carrying out the reserve study in 2021 is appropriate, as the documents provided to the Association from the Reserve Study Specialist in 2015 were entitled "Proposal for Level 2 Update MDA Reserve Study Services" and did not appear to be the final version of the reserve study. Until a final version of a reserve study is received, I do not think we can consider the five-year clock to have started ticking. I do not believe the Association is in violation of the five year reserve study requirement set forth in §55.1-1965 of the Condominium Act.

As for the alleged violation of §55.1-1962, I am not convinced that a violation occurred since this provision is related to formal powers of attorney and the fact that they are not required if a unit owner has designated a licensed individual (under §54.1-2106.1) as his or her authorized representative. The issue at hand was not whether a power of attorney was required by the Association, but instead, whether the Complainant was provided the parking passes he requested on behalf of his clients. The Complainant did not provide any evidence, nor did he allege, that the Association had required a formal power of attorney. It was not clear if the Complainant provided the Association a copy of the written authorization required by this statute. The Association did provide the Complainant the parking decals, thus resolving this issue. I do not find a violation of §55.1-1962 of the Condominium Act.

#### Required Actions

No action is required.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Cedar Lakes Condominium Association