



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

April 22, 2021

Mary Broz-Vaughan  
Director

Complainant: John Baumgarten  
Association: The Villas at River Pointe Condominium Association, Inc.  
File Number: 2021-02069

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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 17, 2021. The Association provided a response to the complaint dated February 12, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on March 9, 2021.

## 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. If such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

### Determination

The Complainant alleges that the Association failed to have an owner meeting and election within the last year. The Complainant believes that such failure constitutes a violation of §55.1-1949<sup>1</sup> of the Condominium Act. He also noted that since two of the board members' terms have expired, the board is limited in its ability to obtain quorum, and believes those members whose terms have expired should not be permitted to sit in on executive sessions or be permitted to vote.

The Association's response was that they were unable to convene an annual meeting due to the pandemic. The Association believed it was in the "best interests of the Association to comply with Executive Orders of the Governor." The Association also noted that its management company was not permitting managers to meet with clients during this time. The Association wrote that the existing directors agreed to remain in their positions until an annual meeting can be convened safely.

Without a doubt, the covid pandemic has thrown associations into disorder in terms of holding meetings, and especially owner meetings, since owner meetings were not included in the Governor's legislation (House Bill 5005<sup>2</sup>) enacted last April that

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<sup>1</sup> A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' 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.

<sup>2</sup> g. 1. Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia, *or any joint meeting of such entities*, may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

2. A public body or governing board convening a meeting in accordance with this subdivision shall:

a) Give notice to the public or common interest community association members using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body or governing board conducting the meeting;

b) Make arrangements for public access or common interest community association members access to such meeting through electronic means including, to the extent practicable, videoconferencing technology. If the

allowed fully virtual board meetings during a declared state of emergency. The Condominium Act does require associations to hold an owner meeting at least once each year. In the present situation, that has not happened. It does appear that there has been a violation of the Condominium Act, and specifically §55.1-1949(A) of that act. Absent a pandemic, this office would normally require an immediate response from an association as to how and when it will hold its annual owner meeting. However, in the current pandemic climate of limited interpersonal interaction, and Governor's Orders that limit the number of people that can gather, determining how to hold an owner meeting is not an easy thing to do, especially for condominiums. It has proven difficult, but not necessarily impossible, for many associations to schedule owner meetings and stay within the confines of the Governor's Orders.

I would note that the fact that an association manager is not able to attend a meeting is not sufficient reason to postpone a meeting or to fail to comply with the law. And while unincorporated associations may not be able to hold virtual owner meetings, incorporated associations, as this one is, generally have more options available to them for virtual owner meetings. However, those options are not available under the Condominium Act and thus do not fall under our authority.

#### Required Actions

The Association does need to hold its owner meeting at the earliest opportunity, while remaining in compliance with the Governor's Orders and any other applicable laws or regulations. The Association may wish to consult with its attorney, or hire an attorney, to determine if, as an incorporated entity, it has any options available to it for holding the owner meeting virtually. Within the next 45 days, I ask the Association to advise me, via email or mail, of its plans for a member meeting.

Please feel free to contact me if you have questions.

Sincerely,

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
The Villas at River Pointe Condominium Association, Inc.

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means of communication allows, provide the public or common interest community association members with an opportunity to comment; and

3. Public bodies must otherwise comply with the provisions of § 2.2-3708.2 of the Code of Virginia. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes of the public body or governing board.