



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

April 22, 2021

Mary Broz-Vaughan  
Director

Complainant: Stephen Kim  
Association: Clark's Corner Homeowners Association, Inc.  
File Number: 2021-02162

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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 December 23, 2020. The Association provided a response to the complaint dated February 15, 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 10, 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. 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 included a cover letter that provided additional information about the complaint that was not included in the original complaint submitted to the Association. As is always the case, this office will not consider such additional information since it was not part of the original complaint and the Association was not provided an opportunity to respond.

The Complainant has alleged that his Association is in violation of §55.1-1816(A)<sup>1</sup> of the Property Owners’ Association Act. This allegation is based on the Association’s new policy of refusing to accept money orders for payment of association assessments. The Complainant believes that the Association should present the minutes that explain the new policy and the logic behind the policy. The Complainant believes that without those minutes, the board must be in violation of the Property Owners’ Association Act.

The Association’s response to the complaint countered the allegations by stating that it had consulted with this agency regarding the acceptance of money orders and cashiers checks and had done its own review of the matter as well. It believes that there is no violation of the Property Owners’ Association Act. The Association also noted that in the midst of the current pandemic, it is “unnecessary and undesirable to require the treasurer to wait on line at the post office to receive these forms of payment and the bank to deposit them.”

The Complainant has not explained how the Association may have failed to comply with §55.1-1816 of the Property Owners’ Association Act, which addresses meetings of the board of directors. While the statute does require that minutes be recorded for board meetings and made available to the members as outlined in §55.1-1815, the Complainant did not allege that the Association failed to take minutes, nor did he allege that the Association had failed to make them available under §55.1-1815. Instead, he stated that the board should present the minutes and that it should provide its reasoning for not accepting money orders. An association is not required to present minutes to owners. Instead, it is required to make them available much the same way any other book or record of the association must be made available. There was no evidence in the complaint that the Complainant had requested a copy of the minutes. The content of minutes is not governed by common interest community law so there is

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<sup>1</sup> All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

no specific requirement as to what must be contained in them. I find no evidence that indicates the Association is in violation of §55.1-1816.

As for the acceptance of money orders, this office has no authority to determine whether an association must accept money orders. Common interest community law does not address methods of payment. I am not sure of the reference the Association made regarding this agency. We would not opine as to whether an association can or cannot accept money orders or other forms of payment.

Required Actions

No action is required of the Association. Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Clark's Corner Homeowners Association, Inc.