



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

Mary Broz-Vaughan  
Director

October 30, 2021

Complainant: Kelly Fowler  
Association: Hillcrest Farms Community Association  
File Number: 2022-00792

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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 August 24, 2021. The Association provided a response to the complaint dated September 22, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received October 11, 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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

This Determination is final and not subject to further review.

### Determination

The Complainant has alleged that the Association failed to provide her recordings of association meetings upon request. The Complainant believes this is a violation of §55.1-1815(B).<sup>1</sup>

The Association’s determination stated that there was no violation of the Condominium Act (I believe the Association meant there was no violation of the Property Owners’ Association Act since this is a property owners’ association and not a condominium) and that the board will determine a method of providing meeting recordings to homeowners. The Association said that when the method has been decided, the information would be released on the website.

I disagree with the Association that there has been no violation of the Property Owners’ Association Act. It appears, based on the documents that accompanied the association complaint, that two requests were made to obtain copies of meeting recordings and in the first case, the Complainant could not access the requested recordings because they were password protected. The subsequent request for a copy of meeting recordings did not result in the Complainant obtaining access to the recordings of the meetings or copies of the meetings.

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<sup>1</sup> B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association’s membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days’ written notice for an association managed by a common interest community manager and 10 business days’ written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

The Complainant's request for the recordings, met the requirements under the Act. The request was in writing, it specified the recordings she wished to access, and it stated a proper purpose. Since it appears that the recordings are maintained as part of the Association's records on the Association's website, the Complainant should have been provided the right to access them or to obtain copies.

The Association did state in its response that it is trying to determine the best way to provide access to the recordings, and I am hopeful that it has arrived at a decision on this matter.

#### Required Actions

Within thirty days of this Determination, the Association must formalize its method of providing meeting recordings to homeowners and ensure that the Complainant has received the recordings she requested in her complaint. I would ask that the Association provide me a brief email or letter outlining its decision within the same thirty-day timeframe. Please let me know if you have any questions regarding this Determination.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Hillcrest Farms Community Association