



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

November 2, 2023

Glenn A. Youngkin  
Governor

Kishore S. Thota  
Director

G. Bryan Slater  
Secretary of Labor

Complainant: Beverly Bradford  
Association: Lansdowne on the Potomac Homeowners Association  
File Number: 2024-00853

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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 15, 2023. The Association provided a response to the association complaint dated September 19, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 5, 2023 and received October 6, 2023.

## 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.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

#### Determination

The Complainant has alleged several violations of the Property Owners' Association Act. The first is that the Association has used work group sessions to circumvent the open meeting requirements under §55.1-1816 of the Property Owners' Association Act.

The second allegation was that the Association has failed to post minutes for association committee and board meetings.

The Association responded to the allegation regarding the use of working groups to avoid the open meeting requirements by noting that no such working group exists. The Association wrote that the Complainant had been previously notified of this. The Association also referenced the community calendar where owners can find the dates and times of board meetings and the Master Plan Committee and stated that owners can receive a weekly email newsletter that contains meeting notices.

The Association further wrote that some members of committees occasionally perform research and bring it back to the committee for review and discussion during a duly noticed committee meeting. The Association acknowledged that these researchers may have been referred to at times as "working groups" but they did not meet in secret, did not keep results secret, and did not constitute a quorum while discussing matters.

In response to the allegations regarding minutes, the Association noted that the bylaws of the association do not require minutes for committee meetings, and instead allow committees to take minutes if they choose. The Association wrote that there is no

requirement in the bylaws or the Property Owner's Association Act that an association post minutes, nor is there a required time period for doing so.

The Association did state that the board keeps meeting minutes and shares them as quickly as possible via the Association website. The Association said that they are generally finalized by the next board meeting and posted on the website no more than 45 days after a meeting.

The Complainant did not provide any evidence or specificity regarding when any unnoticed meeting or meetings of the work group may have taken place. Without any evidence or specific dates that such a meeting took place, this office cannot determine if there was a violation of common interest community law. Based on the response from the Association, there does not appear to be a working group committee and therefore no meetings of this group could have taken place.

The allegations regarding the minutes are similar. The Complainant did not specify particular meetings where no minutes were available, nor did she provide examples that demonstrated that the minutes were in violation of common interest community law. The Property Owners' Association Act is fairly silent about minutes and their contents and, under §55.1-1816(A),<sup>1</sup> only requires that minutes of the board of director be recorded. Under the statute, there is no requirement that minutes of any meeting be posted. If any such requirement exists, it would be in an association's governing documents over which we have no authority. I do not find a violation of common interest community law in relation to an alleged failure to post minutes.

#### Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Lansdowne on the Potomac Homeowners Association

Community Association Management Professionals

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<sup>1</sup> 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.