



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

October 25, 2022

G. Bryan Slater  
Secretary of Labor

Demetrios J. Melis  
Director

Complainant: Susan and Joe Fowler  
Association: Groundhog Mountain Property Owners' Association  
File Number: 2023-00825

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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 18, 2022. The Association provided a response to the association complaints dated September 1, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 16, 2022 and received September 23, 2022.

## 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.

This Determination is final and not subject to further review.

### Determination

The Complainant does not wish to conduct business using electronic means. They believe the Association has an obligation under §55.1-1832<sup>1</sup> to provide in person

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<sup>1</sup> A. Unless expressly prohibited by the declaration, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means.

B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the board of directors.

F. Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to

meetings or a combination of electronic and in person meetings. The Complainant also referenced §55.1-1800 of the Property Owners' Association Act, and its definition of "Electronic Means."<sup>2</sup>.

The Association responded to the complaint by denying the Complainant's request for an in-person or hybrid meeting. The Association raised concern about holding in-person meetings due to the risk Covid, and it also raised the difficulty of holding an in-person meeting when only 16 residents were permanent and the remaining 155 were not. The Association expressed hope that it will be able to hold in-person meetings in 2023 when the new vaccinations can better address the most recent Covid variants. The Association did state that they have requested \$5,000 in the upcoming budget to create a means by which they can hold hybrid meetings in the future.

Virginia Code §55.1-1832 allows numerous actions to be performed using electronic means, including notice, consent, any obligation or right under a declaration or bylaws, and voting, to name a few. The use of electronic means is not available if the declaration prohibits it. The definition of "electronic means" is defined in §55.1-1800 as:

...any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods.

Paragraph F of §55.1-1832 allows associations to hold full or partial meetings by electronic means. The statute also states that "[t]he board of directors shall determine whether any such meeting may be held entirely or partially be electronic means." The next paragraph, Paragraph G, says "[i]f any person does not have the capability or desire to conduct business using electronic means, the association shall make a reasonable alternative, at its expense, for such person to conduct business with the association without the use of electronic means." Neither the statute nor the Act define the phrase "conduct business."

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do so. The board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the association shall make available a reasonable alternative, at its expense, for such person to conduct business with the association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

<sup>2</sup> "Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

Without a definition of the term “conduct business” this office cannot determine if holding a meeting, under the statute, would constitute conducting business, which is the determining factor as to whether §55.1-1832(G) would require an association board to provide an alternative if a person does not desire to meet via electronic means. While I believe the board of directors may conduct business during a board meeting, it seems unlikely that we could define attendance at such a meeting as conducting business with the association. And that is where the right to have an alternative to electronic means lies – in a situation where someone does not wish to *conduct business* with the association using electronic means.

Even if attending a board meeting did constitute conducting business with an association, I am not certain what option would be available to an owner who does not wish to attend a meeting held by electronic means. It seems unlikely that the statute would force the board to meet entirely in person, which means the only option might be to set up a screen where multiple members could gather to watch the meeting that was being held electronically. This would, however, still require an electronic component to the meeting.

#### 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  
Groundhog Mountain Property Owners' Association