



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

James B. "Jeb" Wilkinson, Jr.
Director

September 22, 2025

Complainant: Bruce A. Campbell
Association: Menlough-Culpeper Street Homeowners' Association, Inc.
File Number: 2025-02111

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

On March 3, 2025, the Office of Common Interest Community Ombudsman ("Office") received a Notice of Final Adverse Decision ("NFAD") from Bruce Campbell ("Campbell" or "Complainant"). The NFAD is based on Campbell's complaint to the Menlough-Culpeper Street Homeowners' Association, Inc.'s Board of Directors ("Board") on November 11, 2024. The Board issued a final decision on February 6, 2025. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues Raised

The Complainant raises three issues in his complaint that are properly before this Office, specifically that the Board: (1) is not complying with the statutory provisions of § 55.1-1825 of the Code of Virginia of 1950, as amended ("Va. Code") with regard to the repair and maintenance of capital components; (2) is not maintaining the reserve fund as contemplated by Va. Code § 55.1-1826; and (3) the first two alleged violations specified before constitute a violation of Va. Code § 55.1-1828. The Office's determination for each of these issues are discussed below.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a “final adverse decision may be in conflict with laws or regulations governing common interest communities.”¹ The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with Va. Code §54.1-2354.4 and the Common Interest Community Ombudsman regulations (“Regulations”). An 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 specifically set forth in the Va. Code and Regulations, must concern whether a decision by the governing board, managing agent, or association conflicts with the “laws or regulations governing common interest communities.”²

Common interest community laws are limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act. Because “laws or regulations” pertain solely to the foregoing laws and the regulations of the Common Interest Community Board’s regulations, the NFAD process is not the forum for raising challenges to an association board’s interpretation, action, or inaction under their governing documents. Any complaint that does not concern common interest community laws or Regulations is not appropriate for submission through the association complaint procedure, and this Office will not provide a determination on such a complaint.

The only documents that will be considered when reviewing 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.³ Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal.⁴

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 Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

As noted above, the Complainant presents three issues in his NFAD complaint. The determinations of the Office are discussed more fully below and are based on a review of the materials submitted with the NFAD. Each section will address whether the Board’s actions conflict with the

¹ See, 18 VA. ADMIN. CODE § 48-70-120.

² See, Va. Code § 54.1-2354.3(B) and 18 VA. ADMIN. CODE § 48-70-120.

³ See, 18 VA. ADMIN. CODE § 48-70-90.

⁴ See, Va. Code § 54.1-2354.4(C).

applicable common interest laws or regulations, in this case, the Property Owners' Association Act ("POAA").

1. Association Boards of Directors have statutory authority to levy additional assessments or borrow money for the maintenance of common areas and capital components.

Here, the Complainant asserts that the Board is not exercising its authority under the POAA to maintain the association's reserve fund. According to the Complainant, the Board did not issue an additional assessment or seek to borrow funds for the maintenance of the capital components and/or maintain an appropriate reserve fund balance. The POAA empowers association boards of directors to "levy an additional assessment against its members" when two conditions are met:

(1) the purpose for doing so is found by the board to be in the best interest of the association; **and** (2) the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility, including maintenance, repair, and replacement of capital components. (Emphasis added).⁵

The POAA also empowers association boards to borrow money on behalf of the association, unless the association's declaration provides greater or less authority, "for maintenance, replacement, repair, and restoration of capital components and for funding recommended reserves."⁶

This statute provides association boards with the discretionary tools needed to meet their fiduciary duties regarding the maintenance of capital components and the reserve funds used to financially enable that maintenance. There are, however, no mandatory actions imposed by this statute that requires an association board to either levy additional assessments or to borrow money. Instead, this statute provides association boards with the statutory authority to, in their discretion, use either additional assessments or the borrowing of money to maintain the association's capital components and reserve funds. Because this statute provides association boards with the discretion to maintain capital components and reserve funds through borrowing money or additional assessments, the Office cannot find that the Board's actions conflict with this statute if the Board is electing to not exercise this discretion.

2. Association Boards are required to perform reserve studies and maintain sufficient reserve funds for capital components.

On the other hand, the POAA, in the following statute – Va. Code § 55.1-1826 – requires association boards to conduct a reserve study at least every five years and to maintain sufficient reserves as appropriate and necessary to properly budget for maintaining capital components.⁷ Specifically, association boards "shall ... review the results of [the reserve] study at least annually to

⁵ See, Va. Code § 55.1-1825(A).

⁶ See, Va. Code § 55.1-1825(D). This power also includes the ability to pledge revenues received by the association as security for repayment of the money borrowed.

⁷ See, Va. Code § 54.1-1826(B).

determine if the reserves are sufficient.”⁸ Upon this review, association boards “shall ... make any adjustments to the annual budget and annual assessment the board of directors deems necessary to *maintain reserves, as appropriate.*”⁹ When a reserve study indicates a need for an association to budget for reserves to maintain capital components, the POAA establishes requirements for the association’s budget to explicitly include the projected costs of maintaining capital components, the reserve funds on hand to cover such maintenance, and the difference, if any, between the funds needed to cover the costs and the amount of reserves on hand.¹⁰ The POAA then reaffirms the association’s discretion to meet the costs of capital component maintenance through the reserve fund, additional assessments, or borrowed funds.¹¹

After the catastrophic capital component failure of a condominium in Florida, the Virginia General Assembly and Governor, in 2022, enacted a law, Senate Bill 740 (or “SB740”) that formed a work-study group headed by the Department of Professional and Occupational Regulation (“DPOR”) to review and make recommendations on the “adequacy of current laws addressing the standards for the structural integrity and reserves funds for the maintenance of capital components in common interest communities.”¹² The report issued by the SB740 workgroup (“SB740 Report”) provides further guidance on the need and importance of maintaining adequate reserve funds.¹³ In particular, the following passage from the SB740 Report is relevant to this issue:

Because an association governing board has a fiduciary duty to steward association funds and property, establishing a reserve fund and making adequate provision in the association budget for reserves is important. The information provided by a reserve study helps association members understand the physical condition of the property, and the financial condition of the association, in order to allow for adequate financial planning. A reserve study can serve as an important guide for the association to balance and optimize long-term property values and costs for members, because reserve planning helps sustain property values by protecting against decline in value resulting from deferred maintenance and inability to keep up with aging components.

By establishing a reserve fund and maintaining sufficient reserves, a governing board can reduce the need to impose special assessments on association members when capital components must be repaired or replaced, particularly if the replacement cost is significant. Even if a community only has a limited number of capital components, such as a simple road or driveway, setting aside funds in advance will help guard against

⁸ See, Va. Code § 54.1-1826(B)(1).

⁹ See, Va. Code § 54.1-1826(B)(2). (Emphasis added).

¹⁰ See, Va. Code § 54.1-1826(C).

¹¹ See, Va. Code § 54.1-1826(D).

¹² See, 2022 Acts of Assembly, ch. 421, Enactment Clause 1, Apr. 11, 2022.

¹³ Commonwealth of Va. Dep’t of Prof’l & Occupational Regulation, Report to the House Committee on General Laws & Senate Committee on General Laws and Technology, *Department of Professional and Occupational Regulation Study of the Adequacy of Current Laws Addressing Standards for Structural Integrity and for Maintaining Reserves to Repair, Replace, or Restore Capital Components in Common Interest Communities pursuant to Senate Bill 740 (2022)*, April 3, 2023, <https://rga.lis.virginia.gov/Published/2023/RD207/PDF>, (last visited Sept. 19, 2025).

financial shock when repair or replacement is needed. Establishing and maintaining a reserve fund also allows for a more equitable financial balance between newer owners in a community and existing owners rather than burdening newer owners with the cost to repair or replace older components in the community.¹⁴

The statute and SB740 Report serve to instruct associations of the need to conduct reserve studies and maintain adequate reserve funds for the maintenance of capital components to both comply with their fiduciary duty to the association and to balance the costs and burdens of maintaining capital components between newer and existing members of the community.

In this matter, the records submitted with the NFAD contain a copy of the “Menlough Culpeper HOA reserve study, updated on November 27, 2023. This updated reserve study contemplates reserve account balances of \$11,650 in 2023, \$11,347 in 2024, and \$9,411 in 2025. The reserve study further anticipates “major component liability and risk” amounts of \$30,861 in 2023, \$24,982 in 2024, and 18,633 in 2025, producing “unfunded liabilities” of \$19,211, \$13,605, and \$9,222 in those respective years. Despite these figures from its reserve study, the Board’s budget report for 1/1/2023-12/31/2023 shows that the total reserve income for the year to be zero and that total reserves are zero at the end of 2023. Further, the Menlough-Culpeper Street HOA balance sheet for the period through September 30, 2024, shows a Capital Reserves balance of only \$133.18, and the 2024-2025 budget projected Capital Reserve Funding to be \$6,282 in 2024 and \$0 in 2025.

The Board indicated to the Complainant, in its final decision, that all budgets were approved, the current Reserve Study did not require updating for another five years, and the Board would take “prompt action” to repave the trails (the capital components) “when funds are available.” The Boards did not, however, provide any information or details on how a near zero reserve fund balance was appropriate or whether there were any upcoming actions to address the current reserve fund level as compared to the reserve fund study’s recommended funding levels. The Board’s final decision in response to the Complainant’s complaint is overly general and lacks the detail one might expect regarding an issue as important as the financial health of the association’s reserve fund.

Based on the above information and statutory provisions, this Office finds that the Board’s actions conflict with the provisions of Va. Code § 54.1-1826. In particular, it appears that the Board is maintaining a reserve fund balance of \$0 to \$133.18 despite a reserve fund update completed only two years ago that contemplated a reserve fund balance of \$11,347 in 2024 that would leave an unfunded liability of \$13,605. In 2025, those amounts are \$9,411 and \$9,222, respectively. Considering the statutory language that requires an association to maintain an appropriate reserve balance, this Office cannot conclude that a reserve balance that appears to be near zero is either sufficient or appropriate in light of the foregoing amounts set forth in the Board’s most recent reserve study.¹⁵

¹⁴ *Id.*, at p. 5.

¹⁵ If there is information that would cause a different analysis of this issue, then the Board should have included such information in its response to the complainant.

Additionally, the Board's budget documents conflict with Va. Code § 54.1-1826(C) because it does not include the information set forth in the enumerated items of that subsection. Specifically, the budgets attached in the NFAD submission appear to be missing at least: (1) the current cost for maintenance/repair of capital components; (2) a statement describing the procedures used for estimation and accumulation of cash reserves; or (3) a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves. As highlighted in the SB740 Report, a reserve study and resulting appropriately funded reserve fund that serves to protect association members by "reduc[ing] the need to impose special assessments on association members when capital components must be repaired or replaced, particularly if the replacement cost is significant." Further, an appropriately funded reserve fund "allows for a more equitable financial balance between newer owners in a community and existing owners rather than burdening newer owners with the cost to repair or replace older components in the community." The POAA gives associations the tools it needs to meet this obligation, and those tools should be used to ensure that these goals are met.

3. *The obligations on association members imposed by Va. Code § 55.1-1828 must be remedied in court, not through the NFAD process.*

The POAA requires "every lot owner and all those entitled to occupy a lot" to comply with the POAA provisions and the association's declaration.¹⁶ To attempt to employ this statute to have this Office determine whether the Board complied with the applicable CIC laws or regulations or the association's declaration or other governing documents is improper. While most association boards are comprised only of association members, an association's board of directors is typically a separate entity, the governing body, that acts as a collective. Further, this Office's authority is limited to determining whether an association's board of directors has violated applicable CIC laws or regulations, not an association's declaration or other governing documents. Finally, we note that this statute contemplates that "any lack of compliance [with the statute] shall be grounds for an action ... at law or remedy." In sum, alleged failures to comply with the provisions of Va. Code § 55.1-1828 are not within the jurisdiction of this Office.

Determination and Required Actions

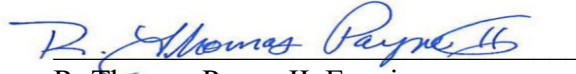
Based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office makes the following determinations and required actions:

- (1) The Board did not violate Va. Code § 55.1-1825 because this Code section merely provides tools for the Board to exercise at its discretion to meet its obligation to maintain capital components;

¹⁶ See, Va. Code § 54.1-1828(A).

- (2) The Board's actions conflict with the obligations imposed by Va. Code §55.1-1826 on associations to maintain sufficient reserve funds and to include certain information regarding reserve study and reserve funds information in its annual budgets. As a result, the Board is directed to provide this Office with a report on its actions to comply with the provisions of Va. Code §55.1-1826 within forty-five (45) days; and
- (3) The provisions of Va. Code §55.1-1828 require resolution through actions at law or equity by the courts, not through this Office.

If the Complainant is dissatisfied with this determination, or part thereof, the Complainant may seek remedies in civil court.


R. Thomas Payne II, Esquire
Interim CIC Ombudsman

RTP II/bt

cc: Board of Directors, Menlough-Culpeper Street Homeowners' Association, Inc.