

OP. NO. 03-107

PROPERTY AND CONVEYANCES: PROPERTY OWNERS' ASSOCIATION ACT.

Members' petition for special meeting of board of directors of property owners' association is not 'communication' requiring board to provide reasonable, effective, and free method of exchange with other owners.

The Honorable Vincent F. Callahan, Jr.
Member, House of Delegates
February 17, 2004

Issue Presented

You ask if a members' petition for a special meeting of the board of directors of a property owners' association is a "communication" that is required to be reasonably, effectively, and freely disseminated to all members of the property owners' association pursuant to § 55-510.2.

Response

It is my opinion that, in the situation described, a members' petition for a special meeting of the board of directors of a property owners' association is not a "communication" that requires the board to provide a reasonable, effective, and free method of exchange with other owners.

Background

You relate a situation involving a planned unit development consisting of over 4,200 individually owned lots that are assessed annually at \$675 each. You note that the association's bylaws provide for a special meeting of the board of directors to be called to address issues of concern to members, upon submission of a petition requesting such a meeting, signed by at least 800 members in good standing. You further relate that some members of the association have requested that the board disseminate their petition, which they believe is a "communication" pursuant to § 55-510.2, to members as an attachment to the association's periodic publication. You advise that the association has refused to circulate the petition with its periodic publication or to provide any other means of dissemination of the petition. You further advise that the members requesting the petition believe that the association's refusal to disseminate the petition is a violation of § 55-510.2, and that their only alternative is a direct mailing, which they estimate would be costly and labor-intensive due to the size of the association.

Applicable Law and Discussion

The Virginia Property Owners' Association Act, §§ 55-508 through 55-516.2, governs the rights and responsibilities of property owners' associations and their boards of directors. Section 55-510.2 provides that "[t]he board of directors shall establish a reasonable, effective, and free method, appropriate to the size and

nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association." Because the Act does not define the term "communicate" as used in § 55-510.2, and there is no case law addressing the nature of the communication meant to be covered by § 55-510.2, we must give the term its common, ordinary meaning.¹ The term "communication" means "[t]he expression or exchange of information by speech, writing, or gestures.... The information so expressed or exchanged."² In addition, "petition" means "[a] formal written request presented to a court or other official body."³

Because the petition for a special meeting of the board of directors⁴ has to be signed by at least 800 members in good standing before it may be submitted to the board, the members' request for the unsigned petition to be attached to the association's periodic publication is, in effect, a request for the association to provide a free mailing or delivery service. The members' purpose in attaching the petition to the periodic publication appears to be to circulate the petition for signatures rather than to communicate information among members about matters concerning the homeowners' association. While the alternatives to disseminating such a petition, which may include door-to-door solicitations, direct mailings, etc., are more labor-intensive and, in the case of a direct mailing, more expensive, these are viable alternatives. Since the members' petition in this situation is an unexecuted formal written request directed to the board of directors, rather than the conveyance of information to other members on a matter concerning the association, I do not believe the petition is a "communication" falling within the purview of § 55-510.2.⁵ Therefore, the board of directors is not required to pay for its dissemination.

Conclusion

Accordingly, it is my opinion that, in the situation described, a members' petition for a special meeting of the board of directors of a property owners' association is not a "communication" that requires the board to provide a reasonable, effective, and free method of exchange with other owners.

¹Op. Va. Att'y Gen.: 2001 at 22, 25; 1993 at 210, 213; see, e.g., *Anderson v. Commonwealth*, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944) (noting that words "listed or assessed" have well-recognized meaning and are commonly used to express thought that personal property must be placed on roll of tangible person property for purposes of taxation).

²Black's Law Dictionary 273 (7th ed. 1999).

³*Id.* at 1165.

⁴A homeowners' association is not required to hold special meetings. Instead, § 55-510(E) provides that an association meeting "shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association," and requires that association members be notified of such meeting, or any other meeting, within the time frames and in the manner prescribed in subsection E.

⁵I note, however, that a letter to members of the property association that describes the petition and the concerns it addresses would appear to be a communication.

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