



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

November 3, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Katharine Kamminga
Association: Tartan Village Community Association
File Number: 2016-00941

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.

Complaint

Complainant submitted her Complaint to the Association dated July 5, 2015. The Association provided a final determination dated September 29, 2015 and the Complainant then submitted her Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 5, 2015 and received October 9, 2015.

Determination

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 §55-530(F) of the 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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complaint submitted to the Association by the Complainant alleged two violations of common interest community law. The first allegation was that by failing to provide a response to a question asked during an annual meeting, the Association violated §55-510.2 of the Property Owners' Association Act. The second allegation was that the Association had failed to keep detailed records of receipts and expenditures as required by §55-510 of the Property Owners' Association Act. The Complainant stated that when reviewing audits of the Association, she was unable to find explanations for two expenditures that occurred in 2012 and 2013.

The Association responded by stating that it had created an owners forum on the association web site in order to satisfy the requirements of §55-510.2. In addition, the Association stated that it had provided details regarding charges by management as requested, and that the Complainant was welcome to request any additional information she had not received.

In response to the Association's creation of the web site, the Complainant provided information that indicated the forum was only for members to communicate among themselves and that it was not an official means of communication with the manager or board. The Complainant believes that because the information was only for members to communicate among themselves, it did not satisfy the requirements of §55-510.2 of the Property Owners' Association Act. The Complainant did ask the manager what method of communication was available to communicate with board of directors and was told that such communication was either through management or by attending a board meeting.

The provision contained in the Property Owners' Association Act related to communication (§55-510.2) states,

“[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** (emphasis added) with the board of directors regarding any matter concerning the association.”

Based on this language, an association must provide a method of communication as opposed to several methods of communication. The Association has attempted to provide such a method by creating a forum on its web site, but if owners cannot communicate with the board of directors through that web site, it is only meeting half of its obligations under this portion of the Property Owners' Association Act.

The failure to provide information regarding certain expenditures of the association is not an allegation that provides sufficient information for this office to make a

determination. The Complaint simply does not provide enough information to determine if a request was made for the specific information the Complainant is seeking, if those documents were willfully not provided, or if the information simply does not exist, in which case it cannot be provided. There is also no evidence in the Complaint or in the NFAD that the Complainant made a request for access to the books and records that comports with the requirements of the Property Owners' Association Act, namely that the request be in writing, for a proper purpose and that it be specific as to the documents requested. The Association did state in its response that it would provide any documents the Complainant requested in writing that did not fall under any of the exclusions listed in §55-510 of the Property Owners' Association Act.

Ideally the Complainant would request the specific documents she is seeking, and do so in a manner that fully comports with the Property Owners' Association Act. Once the Complainant has received a response from the Association, she can, at that time, determine if the response is in compliance with common interest community law and whether she should submit a complaint to the Association.

Required Actions

The Association must comply with all provisions of the Property Owners' Association Act and specifically ensure that a method of communication is established for communication with both members and the board of directors that fully complies with §55-510.2 of the Property Owners' Association Act. In the event that such compliance is not obtained, the matter may be referred to the Common Interest Community Board for whatever action it may deem appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Tartan Village Community Association