



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Karen Sargent
Association: Silcott Meadows Homeowners' Association
File Number: 2016-01145

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 on February 24, 2015. The Association provided a final determination to the Complainant dated October 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 29, 2015 and received October 30, 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) (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.

In her Complaint to the Association, the Complainant has alleged that the Association has violated §55-510.1(A) of the Property Owners' Association Act by stating in an email that "organizational meetings..." of the Architectural Control Committee are "not open to Homeowners." The Complainant provided an email from a board member that indicated a meeting was being held without notice and that it was an organizational meeting and "[t]herefore was not announced and open to everyone." The email went on to state that "[o]rganizational meetings, like the BOD Organizational Meeting after election, is not open to the Homeowners." There were also copies of minutes provided that indicated an organizational meeting was held in executive session.

The Association denied the Complaint.

§55-510.1(A) of the Property Owners' Association Act is very clear and provides that

[a]ll meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section.

There is no limiting language in the Property Owners' Association Act that provides specific situations where the Association can choose to meet without notice to the members. In addition to the open meeting requirements outlined in §55-510.1(A), the executive session requirements also seem applicable here. Executive sessions are to be conducted in accordance with §55-5101(D) of the Property Owners' Association Act, which states

[t]he board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association...

The Association, by having meetings for which it does not provide notice to the members of the association, is in violation of §55-510.1(A) of the Property Owners' Association Act and is also in violation of §55-510.1(D) by conducting executive sessions to address topics that are not appropriate for such sessions under the applicable statute.

Required Actions

The Association must ensure that it provides notice of meetings in a manner that complies with §55-510.1(A) and (D) of the Property Owners' Association Act. I would note that the allegations contained in the Complaint refer to meetings that occurred in March of 2014, and it is my hope that the Association has since changed the way in which it provides notice for meetings and conducts its executive sessions. Future violations of §55-510.1(A) or (D) that result in the filing of a valid Notice of Final Adverse Decision with this office may be referred to the Common Interest Community Board for enforcement action as it deems appropriate.

Both the Complainant and the Association are welcome to contact me if they have any questions regarding this Determination or the requirements that have been set forth.

Sincerely,



Heather S. Gillespie

Common Interest Community Ombudsman

cc: Board of Directors
Silcott Meadows Homeowners' Association