



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

May 14, 2018

Ralph S. Northam
Governor

Esther Lee
Secretary of
Commerce and Trade

Complainant: Lewis Van Allen Jackson, IV
Association: Lenox Place at Sunnyside Homeowners' Association
File Number: 2018-02641

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

The Complainant submitted a complaint to the Association, dated March 28, 2018. The Association provided a response to the Complainant that did not contain a date, but was emailed April 6, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 12, 2018 and received the same date.

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.

The Complainant submitted three complaints to the Association. In the first complaint he alleged that his Association has used private work sessions and other informal gatherings to circumvent open meeting requirements, a violation of §55-510.1¹ of the Property Owners' Association Act. He also alleged that the Association has failed to record minutes for several committees. Specific details were not provided regarding when the unnoticed meetings took place, but what appeared to be a quote from a board member apologizing for an executive session held without an open meeting was included in the Complaint.

A second complaint alleged that the Association, in violation of §55-510.2² of the Property Owners' Association Act asked that the Facebook Administrator of a Lenox Place Facebook Group remove two items the Complainant had posted on a Facebook page and the posts were removed by the Administrator. The Complainant further alleged that the Association sent a "defamatory and factually incorrect email" to the Facebook administrator.

The third and final complaint alleged that the Association has failed to appropriately process "formal requests for access to information" and denied the Complainant a copy of a meeting agenda at a board meeting in violation of §55-510 of the Property Owners' Association Act, a statute that allows for access to the books and records of an association when proper requests are made by a member in good standing. Copies of the requests that had been improperly processed were not included with the Complaint and the Complainant did not explain in what manner the requests had been improperly processed.

The Association responded to the first complaint by noting that there does appear to be one instance "where the Board of Directors may have gone directly into an executive session without opening first in an open meeting." Otherwise, the Association stated that it believes it fully complies with the requirements of the Property Owners' Association Act. As to the allegation that minutes were not being recorded for committee meetings, the Association stated that "§55-510.1 A. of the Act specifically requires minutes of Board meeting to be recorded but does not expressly provide that minutes of Committee meetings be recorded."

In response to the second complaint, the Association wrote that the Facebook Group is not sponsored by the Association and is "operated and administered by an individual resident." It also noted that the Administrator controls the Facebook page as "he/she deems appropriate."

¹ All 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. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55-510.

² The 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.

The Association's response to the third complaint noted that while the Complainant had provided an excerpt from minutes demonstrating a request for an agenda packet, there was no concurrent example that the Association had denied the Complainant access to the agenda packet. The Association also said that it had no recollection of ever denying copies of association documents that were appropriate for review under the Property Owners' Association Act.

I agree with the Association in its response to the first complaint, especially in light of the fact that there were no specific examples of meetings being held without notice, other than the one instance of an unannounced executive session that resulted in an apology from the Board of Directors. Since the Association acknowledged its error and no proof was provided that showed additional violations, I am comfortable that the Association is taking pains to ensure it provides proper notice of meetings. While minutes of meetings are generally beneficial, the Property Owners' Association Act does not appear to specifically require minutes for every single committee meeting. However, the definition of Board of Directors, as set forth in §55-509³, coupled with the requirement that minutes be recorded found in §55-510.1, does seem to suggest that most committee meetings would require minutes, depending upon the nature of the meeting.

Because the Facebook Group mentioned in Complaint number two is not operated or administered by the Association, no violation of the Property Owners' Association Act can be found.

The Complainant alleged that he had made formal requests for access to information since 2016 and had been denied such access or not provided the information in a timely manner. No copies of the formal requests for access to books and records were provided as part of the Complaint. One mention of a request for a copy of an agenda packet was included and appeared to have been recorded in minutes of a meeting, but no additional information was provided. Because there was virtually no supporting documentation of the formal requests made for access to the books and records over multiple years, there is no way for this office to determine if the Association did not respond to such formal requests.

Required Actions

I would encourage the Association to review the minutes requirement contained in the Property Owners' Association Act under §55-510.1 and the definition of "Board of Directors" as outlined in §55-509. If there are committee meetings being held where the committee is "exercising the power of the executive body by resolution or bylaw" it needs to ensure that it records minutes for those committee meetings.

³ "Board of directors" means the executive body of a property owners' association, *or a committee which is exercising the power of the executive body by resolution or bylaw.* (emphasis added)

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lenox Place at Sunnyside Homeowners' Association