



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

June 26, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Janice Lienhart
Association: Newberry Towne Association, Inc.
File Number: 2013-03020

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 a complaint to the Association dated April 4, 2013. The Association provided a Final Adverse Decision to the Complaint dated April 22, 2013. Complainant submitted a Notice of Final Adverse Decision (NFAD) dated May 5, 2013 to the Office of the Common Interest Community Ombudsman and it was received on May 14, 2013 by this office.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the NFAD in its entirety. Any additional information submitted by Complainant that was not part of the original Complaint submitted to the Association was reviewed but not utilized in the Ombudsman's determination.

The Complainant has alleged that the Association has failed to provide notice of meetings on a continual basis despite her request for such notification. Complainant's request was dated March 21, 2013. The Association appeared to initially comply with the notification request by providing notice of an upcoming board of directors meeting to be held on April 9, 2013, but the Association failed to provide notice of two committee meetings held the day before the board meeting. When asked by the Complainant via e-mail why such notice was not provided, the Association responded also via e-mail that the Complainant had not made a proper request under §55-510.1 of the *Virginia Code*, which requires that the lot owner include her name, address, zip code and any e-mail address as appropriate in her request.

The Complainant also alleged that the posting of the notice of the meeting was not sufficient for the purposes of notifying members. Three notices were posted on a bulletin board and, according to Complainant, were obscured by the roof of the bulletin board. In

addition, Complainant alleged that the notices were smaller in size than typical meeting notices. §55-510.1(B) requires that notice of meetings, subcommittees or other committees "shall be published where it is reasonably calculated to be available to a majority of the lot owners."

The Association's Final Adverse Decision stated that "the allegations...were unfounded." In reviewing the March 21 request for continual notification, it appears that the Complainant did not include all of the required information in her complaint. Specifically, she failed to include her address and zip code. Because the request was via e-mail, the e-mail address and her name were part of the request and therefore, included. As to the posting of notice on the bulletin board, the language in the Property Owners' Association (POA) Act is subjective and a determination as to what might be reasonably calculated to be available to a majority of members is a difficult one and not suitable for conjecture by this office.

Required Actions

The Association does appear to have created a misunderstanding with the Complainant by providing notice of one meeting and then subsequently denying notice for two committee meetings. I can understand the Complainant's confusion as to why notice was both provided and denied. However, for the sake of precision, I will agree with the Association that the original request should have contained the information required by the POA Act. I would suggest that the Complainant, if she has not done so already, provide a new request for continual notification under §55-510.1 providing all of the information required by the POA Act. The Association must ensure that it responds to the Complainant's request and provides proper notice for all future meetings, including all committee and subcommittee meetings.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Newberry Towne Association, Inc.