



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

October 11, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Ryan Proctor and Joseph Hover
Association: Sanderling Condominium Association
File Number: 2014-00654

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 copy of the Complaint included in the Notice of Final Adverse Decision (NFAD) does not contain a date indicating when it was submitted to the Association. The Association provided a Notice of Final Determination to the Complainant, dated July 23, 2013. The NFAD submitted to the Office of the Common Interest Community Ombudsman was dated August 21, 2013. As required by the Common Interest Community Ombudsman Regulations, a copy of the NFAD was sent to the Association on September 24, 2013. The Complainant included several pages of additional information in its NFAD that had not been part of the Complaint submitted to the Association. Because the NFAD process is only intended to provide a determination for the Complaint submitted to the Association and the subsequent Final Determination from the Association, the additional information was reviewed but not utilized as part of this Determination.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision (NFAD). Three primary complaints were contained in the NFAD, with one complaint consisting of eight separate sub-complaints. Many of the complaints do not properly fall under the association complaint process as they were alleged violations of the condominium instruments, or related to the general conduct of individuals within the association. The only complaints that will be addressed in this Determination are those complaints that alleged a violation of common interest community law or regulations.

The Complainant alleged that notification of a meeting was inadequate under §55-79.75. Based upon the Complainant's allegation, the meeting was a special board meeting. Complainant believes that the notice requirements of a unit owners' association meeting would be applicable, however, since Complainant has specifically stated that this was a special board meeting a different requirement for notice would be applicable. In addition, the Association stated in its Final Determination that this meeting was a regularly scheduled board meeting, not a special board meeting, and notice had been provided directly to Complainant by email and had also been posted on the website. Whether this was a special meeting or a scheduled board meeting, there appears to have been sufficient notice.

A violation of §55-79.75:1 of the Code of Virginia was also alleged. The Complainant stated that a bulletin board near the garbage area had been removed and no other method of communication was available. The Association's Determination acknowledges removal of the bulletin board but also noted that a public bulletin board is available in the condominium's clubhouse. In addition, the association is working toward creating a forum on its website to meet the requirements of §55-79.75:1. It appears that there has been no violation of common interest community law or regulation.

Finally, the Complainant has alleged that the Association, through its attorney, enforces a time limit during board meetings when the Complainant wishes to raise issues. Under the Condominium Act, and specifically §79.75:1(D) the Association must provide a designated period of time for comments. It would appear that when a designated time is provided, time limits would need to be enforced to ensure that all unit owners who wish to speak have the opportunity to do so. I do not find that there has been a violation of common interest community law or regulation by the Association when it enforces a limit on comments.

The OCICO does not find that there has been a violation of any law or regulation governing common interest communities. Any allegations not set forth in this Determination were intentionally left out as they were not appropriate for the association complaint process.

Required Actions

No action is required of either party. If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Sanderling Condominium