



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

February 26, 2014

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Carlo Mancuso
Association: Monterey Estates Community Association
File Number: 2014-02337

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 Monterey Estates Community Association (Association) dated July 12, 2013. Consideration of the Complaint took place August 21, 2013. The Complainant submitted, with the consent of the Association, additional information regarding the Complaint via letter dated September 9, 2013. The Association provided a Notice of Final Decision dated December 20, 2013. The Complainant submitted a Notice of Final Adverse Decision to the Office of the Common Interest Community Ombudsman dated January 16, 2014 and received January 21, 2014.

Determination

The Office of the Common Interest Ombudsman has reviewed the Notice of Final Adverse Decision. The Complainant has made five allegations in his Complaint. The first allegation is that the Complainant was denied the right to speak during two public comment periods at board meetings held in 2009 and 2010. Ultimately, it appears that the particular date that this alleged violation took place could not be pinpointed, and neither the Complainant nor the Association was not able to find proof that he was in attendance at the meetings where he alleges the violations took place. In addition, even if these dates were accurate and the Association could be proven to have violated the Property Owners' Association Act (POAA) by failing to allow him to be heard at a meeting, too much time has passed in the interim and the Common Interest Community Board, if this matter was referred for enforcement, would no longer have jurisdiction over the matter due to the 3-year statute of limitations set forth in §54.1-301.1 of the Code of Virginia.

The second allegation was that the Complainant had been denied use of his proxy for election of board members. This allegation is not appropriate for the complaint procedure as it is not an allegation related to a violation of common interest community law or regulations. In addition, the Association, in its official response to the Complainant, recognized that the Complaint may have merit and agreed to propose an amendment to the bylaws of the association to address the authority to cast a proxy vote on behalf of an owner.

In his third allegation, the Complainant alleged that the Association had failed to enforce its covenants. Even if true, this is not a matter to be considered by this office, or submitted through the association complaint procedure. §55-515 of the Code of the Virginia does require compliance with the declaration, however, any violation of this provision of the POAA must be dealt with in accordance with the POAA, which states:

“Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its board of directors or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action.”

It seems clear that any violation of this provision would require an action, suit or other form of remedy at law or in equity. This portion of the POAA does not provide for any form of administrative remedy. In addition, any potential violation of the declaration would require a review and interpretation of that document by this office, which would be in direct conflict with the authority and jurisdiction of this office as defined by the Code of Virginia.

The two final allegations are not related to violations of common interest community laws or regulations, and instead are related to possible violations of the Fairfax County Code and harassment by board members. These are not appropriate complaints for the association complaint procedure and will not be addressed here.

Required Actions

No action is required of either party. If either party has any questions regarding this determination, please feel free to contact me.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Monterey Estates Community Association