



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

June 29, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Greg Mathieson
Association: Virginia Run Community Association
File Number: 2016-02789

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 a complaint to the Association dated February 20, 2016. The Association provided a response to the Complainant dated May 13, 2016. The Complainant than submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 19, 2016 with additional required information received June 1, 2016.

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 has alleged that the Association has adopted a new Policy Resolution in violation of §55-510.1¹ of the Property Owners' Association Act. Specifically, the Complainant alleges that language in the Resolution that does not permit any "audible sound while operating," requires all video cameras "be set and remain at wide-angle settings so as to encompass the entire Board of Trustees..." "still cameras may be used but only if they emit no audible noise," and several other provisions are all in violation of §55-510.1.

The Association responded to the Complaint with a Final Decision where it referenced a prior Determination by this office, and addressed the wide angle aspect of its policy and the manager's authority to impose other requirements.

Because the subject of the Complaint submitted to the Association was related to a governing document of the Association and not a specific action that was in violation of common interest community law, this office cannot provide a Determination for this Notice of Final Adverse Decision as we cannot review and interpret association documents. If, however, an Association implements a resolution that does not comply with §55-510.1 and applies it in a given situation, a member has the right to submit a complaint regarding such a violation and can file a Notice of Final Adverse Decision with this office if dissatisfied with the outcome of his complaint. In the present scenario, since this office does not have authority to provide a Determination, the Complainant may wish to consult with an attorney if he believes he has cause for a civil action.

Required Actions

No action is required.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Virginia Run Community Association

¹ Any member may record any portion of a meeting required to be open. The board of directors or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the member recording the meeting to provide notice that the meeting is being recorded.