



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 18, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Louise Bellavance
Association: Golfer's Crossing Property Owners' Association
File Number: 2016-02848

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 February 29, 2016. The Association provided a final determination to the Complainant dated May 3, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 26, 2016 and 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 violated §55-510.1(A), (B), and (C)¹ of the Property Owners' Association Act by holding meetings without notice. Specifically, the Complainant alleges that she has never received notice of any committee or sub-committee meetings since moving to the Association in 2006. In addition, she alleges that in May of 2015, the Paint Committee held a meeting without providing any notice of the time, date or location in violation of §55-510.1(A) and (B). Minutes of that meeting were sent to owners, further validating the allegation that the meeting had been held, but no notice provided. The Complainant also alleges that in January of 2016, a meeting of the Architectural Committee was held without notice, thus violating §55-510.1 (A), (B), and (C).

Because §55-510.1(C) pertains to executive sessions of the board, and no information was provided in the Complaint that identified how the Association may have violated this portion of the Act no determination can be provided as to whether there was a violation of that portion of the Property Owners' Association Act. In addition to the alleged violations of the Property Owners' Association Act, the Complainant also alleged that the board of directors has failed to meet its fiduciary responsibilities. Fiduciary responsibilities, however, are not set forth in common interest community law and therefore cannot be considered in this Determination.

In its response the Association stated that "all scheduled Board meetings are properly noticed to owners as required in our documents" and that "[t]he Board agrees that not every committee meeting in the past has been announced." The Association also noted that the Board has a right, under its bylaws to take action without a meeting if written approval of all directors is obtained.

¹ A. 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.

B. Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

It seems clear that there have been committee and sub-committee meetings held without notice to the owners. This is a violation of the Property Owners' Association Act, which very specifically requires that all meetings be open and that notice of the time, date and place of each meeting must be published. While the Bylaws may allow action without a meeting, that does not seem to be the issue in the present case, as it appears there were meetings without notice as opposed to actions being taken without a meeting which would be governed by the Virginia Nonstock Corporation Act and the Association's own bylaws.

Required Actions

The Association must ensure that every meeting is open to all the members of the Association and that notice is provided for all meetings. This includes any committee and sub-committee meetings that may take place. A failure to provide notice in the future may result in a referral of this matter to the Common Interest Community Board for enforcement action, if it deems such action to be appropriate. In addition, future decisions from the Association need to comply with the Common Interest Community Ombudsman Regulations, specifically 18 VAC 48-70-50 (9)² which requires that the Association's Registration Number and the Manager's License Number be included in the decision.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Golfers' Crossing Property Owners' Association

² 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.