



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

August 11, 2016

Complainant: Mark S. Borkowski
Association: Daventry Community Association
File Number: 2016-03366

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 15, 2016. The Association provided a final determination to the Complainant dated June 6, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 20, 2016 and received June 21, 2016.

Preamble

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.

Determination

The Complainant has alleged that the Association has violated §55-510.1¹ of the Property Owners' Association Act. The Complainant states in his Complaint that "Board Policy 2016-01 (Daventry Community Association Regulatory/Policy Resolution 2016-01 Audio/Video Recording of Board Meetings) is in direct violation of the Virginia Property Owners' Association Act." The Complainant further states that the policy constrains a member's right to record board meetings and asserts authority to the Association that is not contained in the Property Owners' Association Act. The Complainant believes the Policy Resolution must be rescinded.

Unlike prior Determinations related to the recording of meetings, this NFAD and its underlying Complaint are related solely to a Policy Resolution adopted by the Association's Board of Directors and not the application of that Policy Resolution. There is nothing in the Complaint that indicates the Complainant was actually denied the right to record a meeting or to take any other lawful action permitted by the Property Owners' Association Act. While this office has, for prior Determinations, briefly reviewed a policy resolution of an association, such action was taken in an effort to fully understand a particular complaint and the actions taken by a board that were brought into question by a complainant. In a scenario such as the present case, this office has no authority to review, interpret and take action related solely to a governing document such as Policy Resolution 2016-01.

Had the Complainant been denied rights by the Association that were or could be permissible under the law, and subsequently submitted Complaint that included a policy resolution, that policy resolution may have been reviewed to further flesh out the Notice of Final Adverse Decision. However, this office has no authority to interpret the governing documents of an association nor can we require an association to amend or rescind any of its governing documents. As a result, no Determination can be provided.

Required Actions

No action is required of the 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Gillespie". The signature is written in a cursive style with a large initial 'H' and 'G'.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Daventry Community Association