



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 22, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2017-00128

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 June 2, 2016. The Association provided a final determination to the Complainant dated June 20, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 19, 2016 and received the same day.

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 violated §55-79.75(B)¹ of the Condominium Act by failing to inspect the community pool as part of its Covenants Committee inspection of the common elements of the association. In addition, the Complainant alleges that another violation of §55-79.75(B)² occurred when the Covenants Committee permitted a resident of the association who rents rather than owns a unit, to attend the Covenants Committee meeting.

The Association responded by stating in its Final Decision that it found the Complaint to be without merit. The Association further stated that the Covenants Committee walk through does not typically include an inspection of the pool and that in this instance “[t]he Committee determined their inspection would not include the pool and it was their right to do so.” In addition, the Association noted that while §55-79.75(B) does require that all meetings of the Association be open to all unit owners, this statute “does not state that no one else can be allowed to attend the meeting.”

I find no evidence that the Association has violated the provisions of §55-79.75(B).

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie

Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Unit Owners Association

¹ Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

² All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record.