



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 30, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2017-00530

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 on February 18, 2016. The Association provided a final determination to the Complainant dated July 18, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 27, 2016 and received August 16, 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 improperly appointed two board members. According to the Complainant, the Association employed §13.1-867 of the Virginia Nonstock Corporation Act (Waiver of Notice by Director) and appointed two new board members to serve the remaining terms of two board members that had resigned. Included with the Complaint was a copy of a Unanimous Written Consent of the Board of Directors in Lieu of Meeting, with one signature by the President of the Association. No additional information was provided that indicated that all Directors had consented to the meeting.

In its response, the Association stated that "the Complaint is denied." No additional further information or explanation was provided.

It does not appear that the Association had an actual meeting to appoint the new board members. Instead it appears that this action was carried out by utilizing a statutory provision in the Virginia Nonstock Corporation Act (§13.1-868). Because no meeting was actually held, §55-510.1¹ of the Property Owners' Association Act, which pertains to meeting notice, is not applicable. Because the Virginia Nonstock Corporation Act is not considered common interest community law, it does not fall under the jurisdiction of this office and we do not have the authority to provide a Determination as to whether there has been a violation of that Act or if it was applied improperly in the present case.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association

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.