



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 2, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Ileane Kenney
Association: Unit Owners Association of Heatherlea of Arlington, A Condominium
File Number: 2017-03130

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 two Complaints to the Association dated April 4, 2017 and April 6, 2017. The Association provided a final determination to both Complaints dated June 5, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 9, 2017 and received June 16, 2017.

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 alleges in the April 4, 2017 Complaint that the Association failed to distribute information pursuant to a request she made on March 27 and March 29 of 2017. The documents that she asked to be posted on the Association bulletin board were somewhat lengthy with multiple pages for each document. Together the documents were a total of approximately 19 pages. One set of documents was related to amending the bylaws of the association and the other set of documents was related to Consent Orders between this agency (DPOR) and the Association and the Management Company. The Complainant alleges that this failure to distribute (post) the information resulted in a violation of §55-79.75:1¹ of the Condominium Act.

The Complainant further alleged in her April 6, 2017 Complaint that the Association had still failed to post the documents she had requested be posted on March 29, 2017 (the Consent Order documents).

In its response, the Association stated that it had complied with the request to “distribute information as required by Section 55-79.75:1 of the Virginia Condominium Act, as the data sheet you requested to be distributed was posted in the community in the manner provided in Policy Resolution 13-01 on April 7, 2017.”

The Complainant has stated that the Association failed to post documents and never ended up posting the Consent Order documents. In its Final Decision, the Association did not address these documents, it only addressed the posting of a data sheet, which I am not certain is either of the documents that had been requested to be posted. Based on the information provided as part of the Notice of Final Adverse Decision, it appears the bylaws document was posted but the Consent Order documents were not. It is nearly impossible for this office to determine whether the Consent Order documents were ever posted. I have heard from both sides of this issue, and those sides have different accounts as to whether the documents were or were not posted.

I will note that based on a photograph provided with the Complaint, it seems as though it would be very difficult to post a 15-page document on the bulletin board, since the bulletin board is quite small. While the document could be stapled and placed on the board, only the first page would be visible since it appears the bulletin board has a glass cover with a lock. I do not think it would be possible to spread all the pages out on the bulletin board if one were to attempt to do so.

¹ A. The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

I cannot make an absolute determination that the Consent Order document was never posted. It seems unlikely that if posted, the entire document was visible, which is problematic. It does appear that the first document, relating to the bylaws, was posted, but there is no such clarity related to the Consent Order documents. In addition, while the Association may not have posted the bylaws document as quickly as required under its own policy resolution, we have no authority to interpret that policy resolution or enforce it.

I will note that the Association may want to consider its method of communication and whether the current mode is appropriate to the size and nature of the condominium. No information was provided as part of the Complaint to allow this office to determine if the current method is suitable, i.e. number of units, etc., but the fact that it appears nearly impossible to post documents that may be more than a few pages provides some evidence that the current method of communication may need to be updated.

Required Actions

The Association is asked to consider its current method of communication and ensure compliance with 55-79.75:1 of the Condominium Act.

You are welcome to contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Unit Owners Association of Heatherlea of Arlington, A Condominium