



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 21, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Maureen Quinn
Association: Shorehaven Condominium Association
File Number: 2018-00295

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

The Complainant submitted a complaint to the Association, dated December 7, 2016. The Association provided a response to the Complainant dated June 26, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 21, 2017 and received July 25, 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 alleged several different complaints and violations in her complaint submitted to the Association. The first was related to the Association's failure to provide a copy of the state-mandated association complaint procedure. The Complainant stated that she had requested this in November of 2016 and was only provided the complaint form not the procedure for submitting a complaint. The Complainant said that she was only able to obtain a copy of the procedure when her neighbor gave it to her.

The Complainant also alleged that the Association had failed to carry out a reserve study within the past five years, which is a requirement under §55-79.83:1¹ of the Condominium Act. The Complainant further alleged that the Association had failed to provide a copy of the membership list, which is required under §55-79.74:1² of the Condominium Act, assuming the member requesting is in good standing and has made the request in compliance with the requirements under the law.

Another complaint was that the Association had failed to provide minutes for a recent board meeting. The Complainant was told there were no minutes for the last four years. And finally, there was a complaint that no meeting was held, or at least no notice was provided of a meeting to discuss the annual budget of the association. Instead, a copy of the approved 2017 budget was simply distributed among the members.

In its response, the Association stated that it had provided the form in a timely manner. They also noted that a reserve study was completed as of June 23, 2017. The Association said that there was no request for a membership list on the day the Complainant stated she requested it. The Association further noted that the Complainant is entitled to a copy of the membership list, but not a list of telephone numbers or email addresses.

As to the requested minutes, the Association wrote that because quorum cannot be obtained at the annual meetings, there have been no meetings since there was no quorum. The Association did not address the failure to have minutes of board meetings. The Association further stated that they had not been able to obtain quorum for annual meetings for many years. The budget, according to the Association's response, was a result of necessity brought about by the fact that there are only two board members and they were unable to find a time to meet to discuss the budget. The two members chose to approve the budget via email.

The Association should have provided the Complainant the entire complaint procedure upon request, not just a complaint form. Under the Common Interest Community Ombudsman Regulations, the association complaint process is required to be in writing and readily available.

¹ A. Except to the extent otherwise provided in the condominium instruments and unless the condominium instruments impose more stringent requirements, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;

² B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation.

It appears that the reserve study has been completed. The Complainant was correct that a new reserve study is required every five years.

The Complainant is allowed a copy of the membership list, as long as it was requested in accordance with the statute. While I was able to find an email in the documents included with the original complaint that appeared to request contact information of the owners, there was no purpose included which is a requirement under the statute. The association claimed that no list was requested. The Complainant should request the association list again, ensuring that she is in compliance with the statutory guidelines and the Association must ensure that it responds appropriately, and provides the required information.

If quorum cannot be obtained, there really cannot be a meeting and therefore there may not be any minutes from the annual meetings. If the board, as it exists, is carrying out the business of the association, however, it should be having board meetings, those meetings should be open to the owners, and there should be minutes of those meetings. Providing notice of meetings in the future and holding actual board meetings to make decisions will help resolve the problem that arose in relation to making a budget without having a meeting.

This association appears to be struggling due to a lack of quorum at annual meetings which has resulted in only two people serving on the board of directors. While we cannot enforce or interpret the condominium instruments, it would be my guess that the Bylaws require more than two members on the board. The Association needs to figure out how to obtain quorum at its annual meeting so that it can have a valid election and elect the required number of board members. Under new legislation that became effective in 2015 (§55-79.76³) the Association can petition the court to assist it in carrying out its annual meeting and obtaining or changing quorum.

Required Actions

The Association must provide a copy of its complaint procedure (not just a form) to this office within 30 days of the date of this Determination. It must also ensure that in the future, such complaint procedure is readily available to any member or citizen who requests it, as required by the Regulations.

³ C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the city or county in which the condominium or the greater part thereof is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive organ, provided that:

1. No annual meeting as required by § 55-79.75 has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and
2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

As set forth above, if the Complainant requests the association membership list in a manner that comports with the statutory requirements, the Association must provide a copy of that list.

While there may be no minutes of annual meetings available due to the failure to obtain quorum, there should be meetings of the board of directors and there should be minutes from those meetings. The board is required to provide notice of any of its future board meetings to all owners, and make certain that it keeps proper minutes of all board meetings in the future.

Finally, the board needs to consider whether it wishes to move forward under §55-79.76 and petition the court to assist it in obtaining quorum for an annual meeting so that it can have an election and ensure that going forward it has the proper number of board members.

A failure to comply with any of these required actions may result in a referral of this matter to the Common Interest Community Board which will determine whether it is appropriate to take enforcement action against the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Shorehaven Condominium Association