



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

September 21, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mathias Neumann
Association: Bluewater Property Owners Association
File Number: 2018-00774

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 16, 2017. The Association provided a final determination to the Complainant dated August 11, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 31, 2017 and received September 1, 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 has alleged that the Association violated §55-510.2 of the Property Owners Association Act by failing to provide access to the email addresses of all owners. The Complainant believes that the association board should release its owner email list that is used for distribution of information and that a failure to do so is a violation of the Property Owners' Association Act. The Complainant provided several portions of emails in the complaint, whereby several board members stated that those owners who wish to disclose their email addresses have submitted them for inclusion in the member directory, that some owners have been promised their email addresses will not be released, and that the member directory is the best method for reaching any other owners in the community.

The Association responded to the Complaint by noting that when the President established the email list of owners who wished to receive electronic updates from her, she did so under a promise of privacy and agreement that all email addresses would be kept confidential. The Association acknowledged its obligation to provide a method of communication that complies with §55-510.2 of the Property Owners Association Act and wrote that it met this requirement by publishing an annual member directory that includes the name, address and telephone number of each owner. Emails of members who wish to have their email addresses published are included in the directory. A hard copy of the directory is provided to all owners each year and it can also be found on the association's web site.

The Complainant included additional information in support of his allegations, but because they were not part of the original complaint to the association and thus the association has not had, nor will it be provided, an opportunity to respond, the additional information will have no bearing on this Determination.

The Complainant has alleged a violation of §55-510.2 but I find that there has been no such violation. The association has provided contact information for all its members via an annual directory which includes email addresses for those that wished to have their email addresses published in the directory. The association is not obligated by law to provide access to email addresses, it is only obligated to provide the membership list and addresses, to members in good standing, as required by §55-510. In addition, the association is not required to provide access to an individual owner's file, per 55-510(C)(9). Under that provision, "[i]ndividual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association" may be excluded from examination or copying by a member of the association. Personal email addresses that an owner does not wish to have published can certainly qualify as being part of a member's individual file.

While emails can make communication easier, as the Complainant argues, they are not required to be part of a method of communication as required by the Property Owners' Association Act. In addition, based on the information provided, some owners specifically did not wish to have their email addresses released and as provided under 55-510, individual member files may be excluded from copying or examination. I do not find that the Association has violated §55-510.2 of the Property Owners' Association Act.

Required Actions

No action is required.

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

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bluewater Property Owners Association