



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

October 6, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Mathias Neumann
Association: Bluewater Property Owners Association
File Number: 2018-00952

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 September 1, 2017. The Association provided a final determination to the Complainant dated September 9, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 20, 2017 and received September 21, 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 a violation of §55-510 of the Property Owners' Association Act. This provision is related to an owner's right to access the books and records of the association. Unfortunately, there was no specific allegation contained in the Complaint and therefore it was not apparent what the reason was for submitting a complaint in the first place. There were two emails or portions of emails included in the complaint. One email was from the Complainant and contained a request for access to certain books and records of the association, and the other was from the Chairman of the Association and referenced a quit claim deed that had been filed by the Complainant. But I was not able to find a specific allegation of a violation of §55-510 of the Property Owners' Association Act.

The Association appeared to understand the purpose of the Complaint and responded to by stating that the Complainant had been previously notified that he is no longer considered an owner or member of the association due to the filing of a quit claim deed in 2015.

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.

While this office is somewhat familiar with the matter of the quit claim deed and the Association's position as well as that of the Complainant, it is not appropriate for this office to insert its own additional information or knowledge into this Notice of Final Adverse Decision. The submission must stand on its own without relying on this office having a deeper understanding or knowledge than what might be included in the original complaint to the association. In this case I find that there simply was not sufficient information submitted in the complaint to allow any determination by this office. Without a clear allegation outlining how or why the Complainant believed the Association had violated common interest community law, there is no way for this office to make a determination as to whether there has been a violation of common interest community law.

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