



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 7, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Betty Marroletti
Association: Eagle Pointe at Cahoon Plantation
File Number: 2018-01442

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 September 25, 2017. The Association provided a response to the Complainant dated October 19, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 7, 2017 and received November 15, 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 Manager of the Association failed to forward an email to all members when requested to do so. The Manager requested that the Complainant submit the distribution request to the Board of Directors. The Complainant stated that the document was not forwarded as requested which resulted in a violation of §55-79.75:1¹ of the Condominium Act. Specifically she stated that alleged violation was because there is no way to exchange information on a bulletin board and the mailbox slots are not appropriate to the size and nature of the condominium.

The Association responded by referring to its Communications Policy and Guidelines and noting that a bulletin board and mailbox holders were available for communication among residents. The Association also noted that they posted the email on the bulletin board with no changes to it other than to identify the poster. The Association also stated that they have instituted an online discussion group and a Facebook page has been established for owners and residents. Finally they noted that there is an open forum at meetings for owners to communicate with the board and others.

Determining what is a reasonable, effective and appropriate method of communication is outside the scope of this office. The terms have never been defined within the confines of common interest community law and because they are so specific to a particular issue, a definition based on common usage would not be appropriate. However, it does appear that the Association has provided a number of different opportunities for communication within the Association. While the mailbox slots might not be a perfect method of communication, they would allow two-way communication if someone chose to utilize them for that purpose.

Physical bulletin boards do not always provide the ability to respond to a posting, but it can be done if someone wanted to have a response posted. The online discussion group would certainly meet the requirement of allowing residents to communicate among themselves and with the executive organ. It is not clear from the Association's response if the Facebook page was created by the Association or was created by someone else. Either way it does appear to provide an additional method of communication.

Finding the perfect method of communication is quite difficult in this day and age. Arguments can be made that the use of technology, i.e. email, forums, etc. would preclude those who don't use such technology from using such a technological method of communication. Other arguments can be made that mailbox slots or "cubbies" are old-fashioned and not in line with today's current technological options. Bulletin boards are often small and can make it difficult to post multi-page documents. Postings on a bulletin

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.

board are not always easy to respond to unless members/owners have unfettered access to the board.

Ultimately, I believe the association has provided several different options for communication and while no single method is perfect, it would appear that the mailboxes do provide the opportunity to communicate with others and to receive communication as well. It is not clear to me from the complaint, but if the document that the Complainant had sent was ultimately sent through the Association's email blast system, it would appear that any responses would have been received by the Association and not by the Complainant. That method does not seem to provide any more opportunity to communicate *among* owners than the bulletin board method does. The Association appears to have provided several communication options for the owners and there is no requirement under the statute that every owner must be willing to use whatever form of communication is provided

Required Actions

No action is required.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Eagle Pointe at Cahoon Plantation