



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

May 26, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Natalie File
Association: Regents at Lake Manassas Homeowners Association
File Number: 2015-02683

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 December 1, 2014. The Association provided a response to the Complainant dated April 17, 2015 and the Complainant then submitted her Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 29, 2015 and received May 4, 2015.

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.

Complainant alleged that the Association had failed to adhere to the open meeting requirements found in §55-510.1 of the Code of Virginia by not providing proper notice of meetings and work sessions and by failing to make all meetings open meetings. Complainant also alleges that the Association failed to provide an opportunity for members to speak during its work sessions, in violation of §55-509 of the Code of Virginia. The Complainant states in her Complaint that business is discussed in the work sessions and therefore they fall under the definition of a meeting as set forth in the Property Owners' Association Act (§55-509).

The Complainant provided several instances where the Association was alleged to have held a meeting that was unannounced and/or closed to the members. The Complainant also asked the Association to "only enter into executive session upon an affirmative vote in an open meeting..." and to "keep the number of emails between directors to a minimum and save these discussions and decisions for properly noticed and open meetings. No allegation of a violation of common interest community law or regulation was made regarding the executive sessions or emails between the directors.

A meeting notice was included in the Complaint that stated that an upcoming meeting was "a working session for the BOD to discuss 1. Late Fee Waivers 2) New Landscapers 3)KT Irrigation 4) BOD Code of Conduct." Another meeting notice included in the Complaint stated that the purpose of a BOD Working Meeting was "to conduct HOA business."

In its response to the Complaint, the Association determined that it may have held working sessions that were unannounced, that the Association will no longer hold unannounced meetings and that executive session will be held in accordance with the law. The Association did not agree that owners should be provided an "open forum" during work sessions.

§55-510.1(A) of the Property Owners Association Act appears to make a distinction between "work sessions or other informal gatherings of the board of directors" and "meetings of the board of directors, including any subcommittee or other committee thereof..." §55-509 defines a meeting as "the formal gathering of the board of directors where the business of the association is discussed or transacted." Since a work session is considered informal, it would appear that is not technically a meeting of the board of directors as defined under §55-509. As a result, there is no need to provide a "period of time during a *meeting* to allow members an opportunity to comment on any matter relating to the association." (§55-510.1(D))

In the present case, however, the Association was using work sessions as another form of board meeting, and there did not appear to be anything informal about the gatherings of the board members based on the notices provided to owners, and therefore it was not unreasonable for the Complainant to have an expectation that a comment period be provided during the board of directors meetings that were being labelled work sessions. The Association needs to better educate itself so that it no longer misuses work sessions

or other informal gatherings. In most cases, work sessions should be used sparingly, and all business related to the association should be conducted at board meetings.

The Complainant noted in her NFAD cover letter that the Association failed to address her concerns about email discussions by the Board in its response to her Complaint. While the Complainant did raise the issue of email usage by the Board of Directors in her Complaint, she did not allege any violation of common interest community law or regulations and therefore the Association was not required to respond to her comments.

Finally the Complainant stated in her cover letter that the Association had failed to provide a response that complied with the Common Interest Community Ombudsman Regulations by failing to include notice of her right to file a Notice of Final Adverse Decision with this office. Here, the Complainant is correct. Not only did the Association fail to provide the Complainant notice of her right to file a Notice of Final Adverse Decision and the appropriate contact information for doing so, it also failed to include the name and license number of its manager, as well as the registration number of the Association. (18 VAC 48-70-50)

Required Actions

The Association must ensure that it no longer uses work sessions improperly. A work session is an informal gathering of the board, whereas a board meeting is defined as a "formal gathering where the business of the association is discussed or transacted." Any future misuse of a work session or failure to provide a comment period during a meeting of the board of directors could result in a referral of this matter to the Common Interest Community Board for whatever action it deems appropriate.

The Association also needs to review the Common Interest Community Ombudsman Regulations and make certain that any future complaint submitted through the association complaint procedure is properly processed, and that any final determination contains the information required by the Common Interest Community Ombudsman Regulations. A failure to follow the Common Interest Community Ombudsman Regulations for future complaints may result in a referral to the Common Interest Community Board.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Regents at Lake Manassas Homeowners' Association