



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Karen Sargent
Association: Silcott Meadows Homeowners' Association
File Number: 2016-01143

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 her complaint to the Association on September 3, 2015. The Association provided a final determination to the Complainant dated October 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 29, 2015 and received October 30, 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.

The Complainant has alleged that the Association's board of directors voted by secret or written ballot, a violation of §55-510.1(B) of the Property Owners' Association Act. The Complainant stated that this appeared to be the case based on an Internal Operating Procedure (IOP) document that was signed by the members of the Architectural Control Committee (ACC) with no record of the document having been approved in an open meeting. The Complainant also alleges that the Association has violated §55-510 of the Property Owners' Association Act by failing to distribute copies of the aforementioned document to the members of the association.

The Association's response to the Complaint was to deny the complaint.

I do not believe that enough evidence has been provided to prove that a secret vote was taken by the board of directors. It is also not clear if the IOP document was approved by the individuals that signed it. There is no language in the document that states the signatories are approving the document. Instead they may have simply been agreeing to follow the IOP or were certifying that they were on the ACC. Even if there were sufficient evidence to prove that a secret vote had taken place, this office does not have jurisdiction over the governing documents of an association. Therefore if a document has been approved by the board improperly, there is no action that can be taken to nullify the results of such action, other than some form of civil law action.

The failure to distribute the document is not a violation of §55-510. That statute provides for access to books and records of an association, but does not have a requirement that all documents of the association be distributed to members.

Required Actions

No action is required of the Association.

Both the Complainant and the Association are welcome to contact me if they have any questions regarding this Determination or the requirements that have been set forth.

Sincerely,



Heather S. Gillespie

Common Interest Community Ombudsman

cc: Board of Directors
Silcott Meadows Homeowners' Association