



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

February 10, 2016

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Daniel Manning
Association: Huntington Forest Homeowners' Association
File Number: 2016-01610

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 two complaints to the Association on November 24, 2015. The Association provided a final determination to the Complainant dated December 15, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 24, 2015 and received December 28, 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 submitted two complaints to the Association. The first Complaint alleged that the Association violated §55-510(F) of the Property Owners' Association Act by cancelling its annual meeting. The Complainant also alleges that this is a violation of the Bylaws of the Association and a violation of the Virginia Nonstock Corporation Act. According to the Complainant, the President of the Association provided notice via email to all owners that the annual meeting was cancelled and would be rescheduled, due to a problem with the election ballots and procedures. The Complainant believes this action "deprives the Members of their right to officially meet for the purposes stated in the Bylaws..." The Complainant further states that the Board should have convened a meeting to elect new officers seven days from the date of his Complaint, based on the language contained in §55-510 of the Property Owners' Association Act.

The Complainant's second Complaint alleges that the Association has been exposed to potential liability as a result of its failure to hold an annual meeting and elect directors. The complaint references the Virginia Nonstock Corporation Act, the governing documents of the Association, prior case law, and the Property Owners' Association Act. No new reference is made to the Property Owners' Association Act, so it can only be assumed that the Complainant is referencing §55-510(F). Because this office has no authority or jurisdiction over anything other than common interest community law and regulations, it cannot provide a determination as to whether the cancellation of the meeting would violate the Nonstock Corporation Act, the governing documents of the Association or any prior case law.

The Association responded to the Complaints with both an email and a final determination. In its email, the Association confirmed receipt of the Complaint and notified the Complainant of the date, time and location for consideration of his Complaint. In addition, the Association informed the Complainant that the annual meeting had already been rescheduled to January 21, 2016 and the prior errors related to ballots would be corrected in the interim.

In its Notices of Decision, the Association denied the Complainant's suggested remedy of convening a meeting in seven days for the purpose of the election of directors. The Association also voted to move forward with the annual meeting that had been rescheduled to January 21, 2016. The Association also denied the requested remedy included in the second Complaint, where the Complainant asked that the "Board members and officers acting outside of their allowed term of office to cease all activities which expose the HFHOA to substantial liability."

§55-510(F) of the Property Owners' Association Act states as follows:

Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are

elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

While all associations are required to hold a meeting of the association at least once per year, there are occasions where holding such a meeting may be difficult or unsuccessful or even impossible for a variety of reasons. While I agree that the Association appears to have failed to hold a meeting of the association in the month of November, which is when both the Complainant and Association agree the meeting was originally scheduled, the Association rescheduled the meeting and I have confirmed with Association Counsel that the Association has already held the meeting as of the writing of this Determination. It is not a requirement under the Property Owners' Association Act that a cancelled annual meeting of the association be held within seven days, but instead the provision contained in §55-510 simply requires that seven-days' notice be provided for any subsequent meeting that is scheduled for the election of directors.

While technically the Association did not hold its annual meeting within the designated timeframe, it did immediately reschedule the meeting and carried out its responsibilities under common interest community law. Because the meeting has been held and elections have been carried out there is nothing further required of the Association.

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
Huntington Forest Homeowners' Association