



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

April 4, 2016

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert A. Gardner
Association: Crestbrook Homes Association, Inc.
File Number: 2016-02045

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 on December 7, 2015. The Association provided a final determination to the Complainant dated January 25, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received on February 17, 2016.

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 a violation of §55-510.2¹. This allegation is based on the Association's unwillingness to share its email list of owners with the Complainant resulting in the Complainant having to utilize the U.S. Postal Service, to share information with the entire membership.

The Association responded to the Complaint by stating that it would set up a Yahoo Group or similar online bulletin board for use by all owners. The manager of the association will monitor the site and report the substance of postings to the board at each board meeting. The Association also stated that it will notify owners of the board's existence.

If the Association did not previously have any method of communication for the owners prior to the creation of an online bulletin board, it would, indeed have been in violation of §55-510.2 by failing to have a method of communication available to the membership. It has now rectified that failure, or has promised to do so in the very near future. The failure to provide the Complainant an email list of all members is not a failure to provide a method of communication. Such a request would be a request for information or records, as opposed to a "method," which is usually defined as a procedure or a way of doing something.

Required Actions

The Association needs to ensure that it provides a method of communication to the members of the Association that fully complies with §55-510.2. In addition, I would ask the Association to provide this office, within thirty (30) days of this Determination, proof that the online bulletin board is fully functioning. Any future failure to comply with §55-510.2 may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Crestbrook Homes Association, Inc.

¹ The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.