



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

April 4, 2016

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Larry and Bernadette Johns
Association: The Property Owners' Association Chesdin Landing and Chesdin Shores, Inc.
File Number: 2016-02112

Jay W. DeBoer
Director

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 October 28, 2015. The Association provided a final determination to the Complainant dated January 29, 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 26, 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 §55-510.1, §55-514 and §55.514.1 of the Property Owners' Association Act. Specifically, the Complainant alleges a violation of

§55-510.1¹ as it relates to a failure to provide sufficient notice for board meetings and special meetings. The Complainant states that meetings of the board are held inconsistently, that notice is provided on the management company's website, and that such notice is not ideal since not everyone has access to a computer, the website could be down, the process of logging in is tedious, and locating the calendar on the site is difficult. The Complainant also notes that an owner might have to check the website every day to determine if there is a meeting. The Complainant believes that posting meetings at the club house is not a reasonable solution as it was not previously available to all members of the association.

The Complainant has also alleged that the Association has violated §55-514.1 which requires all associations to conduct a reserve study every five years. According to the Complainant, the most recent reserve study was done in 2012, but that reserve study has not been the one included in at least four disclosure packets, and a 2004 reserve study had been included instead. No copy of a disclosure packet with the 2004 reserve included study was provided.

The Complainant's third allegation is that the Association violated §55-514² by specially assessing each owner \$350 and then giving the money to the Golf Club. The Complainant stated that "the club is a private entity and is not entitled to receive money from the Chesdin Landing Property Association..." The Complainant believes the special assessment and subsequent transfer to the Golf Club is a violation because §55-514 "does not permit the use of association money for any other purpose than maintenance to the grounds and capital improvements owned by the association."

The Association responded to the allegations by stating that due to the work schedules and other conflicts, the Board meetings cannot be held on a consistent day each month. The Association stated that the meetings are posted on the Association's website, on the Association's bulletin board near the gym, and in the clubhouse. The Association wrote that the notification "was reasonably calculated to be available to a majority of the lot owners as required by Va. Code Ann. §55-510.1."

It does appear that the Association provided sufficient notice to comply with the requirements of the Property Owners' Association Act. Posting notice in three places is significant, and while having a consistent meeting date can make it easier for owners to remember meetings, ultimately it is the board of directors that needs to find times and dates that work for all board members.

¹ Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

² In addition to all other assessments which are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures.

As for the failure to utilize the proper reserve study for disclosure packets, the Association noted that “the Association’s manager has spoken with the Disclosure Department and made sure that the 2012 reserve study will be included in all future resale disclosure certificate packages.” While it is unfortunate that an error may have been made by including an older version of the reserve study in several disclosure packets, the Association appears to have taken steps to keep this from happening in the future.

Finally, in response to the allegation that the Association improperly assessed the owners, the Association stated that it believes §55-514 “allows for a broader use of association funds” and that the funds from the special assessment “were used for a proper purpose.” The Association supports its contention by noting that §55-514 allows for the use of special assessments for “other areas of association responsibility expressly provided for in the declaration...” and therefore, because the declaration of the Association provides language permitting certain uses of special assessments other than those set forth in §55-514, the special assessment was valid. Because this office cannot review and interpret the declaration to determine if it provides the language necessary to support the Association’s position, no determination can be provided regarding compliance with §55-514.

Required Actions

The Association needs to ensure that disclosure packets contain all necessary and required information. The failure to include a current reserve study appears to have been inadvertent and will hopefully serve as a reminder for the future.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Property Owners’ Association Chesdin Landing and Chesdin Shores, Inc.