



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

March 24, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Valeriya Kotova
Association: Village Homes of Stoney Run Condominium Association
File Number: 2017-02098

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

The Complainant submitted a complaint to the Association, dated February 8, 2017. The Association provided a response to the Complainant with no date. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 1, 2017 and received March 3, 2017.

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 alleges a violation of the Condominium Act in her Complaint. In addition, the Association failed to provide a final decision that comports in any way with the requirements of the Common Interest Community Ombudsman Regulations. Both the Complaint and the Association's response will be addressed here.

The Complainant submitted a written request to the Association on April 18, 2016, asking to be notified of meetings of the executive organ. The Complainant referenced 55-79.72:3¹ and §55-79.75(B)² as her basis for her request to be notified on a regular basis. The Complainant stated that she was not notified of meetings as she had requested.

The Association responded to the Complaint by stating that the Complainant is not a unit owner in good standing, that the Board of Directors is not affiliated with any organization called the UOA (the Complainant referenced Stoney Run UOA in her complaint), executive sessions are closed, and set forth the meeting schedule for board meetings which is every 3rd Wednesday of every month(unless otherwise posted).

Both 55-79.72:3 and §55-79.75 make it very clear that owners have an absolute right to attend meetings of the association and executive organ. While §55-79.72:3 may reference good standing (and this office is not privy to any information as to whether the Complainant is or is not in good standing) it also references §55-79.75 which clearly states, "[a]ll meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record." There is no requirement in §55-79.75 that an owner be in good standing in order to attend a meeting and an owner can only attend if provided notice of a meeting. Therefore I cannot find any reason to deny a member the right to be provided continual notice of meetings if they are allegedly not in good standing.

The Association's contention that it does not know of an organization called the "UOA" is moot, but I would note that UOA is traditionally used as an abbreviation for "unit owners association." Nowhere in the Complainant's complaint did she ask to be privy to executive sessions, but instead asked about the meetings of the executive organ³, which is the name used in the Condominium Act to describe the board of directors. Finally, providing a general notice of meetings (unless otherwise posted) is not sufficient to meet the requirements of §55-75(B). The Complainant has an absolute right to receive continual notice of meetings.

¹ Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:
3. The right to have notice of any meeting of the executive organ, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55-79.75

² A unit owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

³ "Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association. §55-79.41

In addition to its failure to be properly responsive to the request for continual notice by the Complainant, the Association failed to respond to the submitted complaint in a manner that complies with the Common Interest Community Ombudsman Regulations. Those regulations (18 VAC 48-70-50(9) and (10)⁴ require the final decision to be dated, contain the registration number of the association, the license number and name of the licensed manager, and the Complainant's right to file a Notice of Final Adverse Decision with this office. None of those requirements were met.

Required Actions

The Association must provide continual notice to any owner that requests such notice in a manner that complies with the Condominium Act. The Association must also review and apply the Common Interest Community Ombudsman Regulations when responding to any complaints in the future. Any failure to provide continual notice or to comply with the Common Interest Community Ombudsman Regulations will result in a referral of the matter to the Common Interest Community Board for whatever enforcement action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Village Homes of Stoney Run Condominium Association

⁴ 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.