



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

April 3, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Kathy Hughes
Association: Shirlington Village Condominium Association
File Number: 2017-02158

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 an undated complaint to the Association. The Association provided a response to the Complainant dated February 28, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 6, 2017 and received March 9, 2017. A required document was missing from the original submitted NFAD, but the Complainant was able to submit it within the thirty-day timeframe required by the Common Interest Community Ombudsman Regulations.

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 a Complaint to the Association alleging three things. The first was that the Association had failed to abide by the Condominium Act by holding work sessions and meetings without notice. The second allegation was that the Association had provided “preferred maintenance” to an owner, and the third was that the Association had not provided access to the books and records when it failed to provide an invoice for the “preferred maintenance.”

The first allegation is governed by §55-79.75(B)¹ of the Condominium Act, which requires that notice be provided for all meetings of the Association and that work sessions not be abused. There is no provision in the Condominium Act regarding “preferred maintenance” and nothing was provided in the Complaint that indicated a statute from the Condominium Act was implicated. As a result, the allegation of “preferred maintenance” will not be addressed here as it does not fall under our jurisdiction and is not appropriate for the complaint procedure. The third allegation is related to §55-79.74:1² of the Condominium Act (only a portion of the statute is provided below) which requires that associations keep detailed records of expenditures and that owners be given access to all books and records other than those that may be excluded from review by that statute.

The Association provided a response in which it addressed each of the three allegations. It acknowledged that there have been occasions where the Board fell short in following the requirements for transparency contained in the Condominium Act. The Association stated that “the Board is taking steps to ensure better communication, consistent with requirements of the Act and will put in place the following procedures to support efforts to improve transparency...” The procedures included methods of meeting notice, a manager’s weekly report, draft meeting agendas, and meeting agenda packet

¹ All 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. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

Notice of the time, date and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

² A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

availability. Overall, it appears the Association is making every effort to adhere to the requirements for notice and transparency under the Condominium Act.

The Association acknowledged the "preferential maintenance" allegations but noted that such a complaint was "not a matter appropriate for consideration as part of the internal complaint process."

The third allegation was also addressed and the Association noted that "the Board will take action to develop and adopt a resolution that establishes practices and procedures for responding to unit owner requests for access to Association books and records." The Association also asked that the Complainant confirm that she had received the books and records she had requested.

From my perspective, this is an example of exactly how an association complaint process should work. An owner raised concerns with the association via the complaint process, and the association acknowledged errors or imperfection and responded to them by taking action and adopting procedures to ensure adherence with the applicable laws in the future. I do not see the Association's response as being adverse to what the Complainant sought, and it appears, instead, as though the Association intends to do exactly what would have been required of it in the event that it had not taken on the responsibility of self-correction.

Required Actions

The only action required of the Association is that it adheres to its plan to adopt new practices and procedures and comply with the Condominium Act. That process appears to be well under way.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Shirlington Village Condominium Association