



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

March 15, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Thomas G. Luckman
Association: West Neck Community Association
File Number: 2019-02131

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 January 4, 2019. The Association provided a response to the Complainant dated January 25, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 18, 2019 and received February 20, 2019.

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 that the Association has failed to make board meeting agenda packets easily available for owners who wish to review them. Specifically, the Complainant believes the Association is violating §55-510.1(B)¹ by making the agenda packet available only during working hours of the Village Hall instead of making the packet available online or available in a folder in the association library. The Complainant also suggests that the requirement for a signature by any homeowner requesting the agenda package should be terminated. Finally, the Complainant asks that the Association address this complaint during the open session of a board meeting and not as part of a discussion of legal matters in executive session.

The Association's response to the Complaint was to state that "the Board has denied your Complaint."

I understand the Complainant's argument that the packet could be made easily available online or located somewhere within the community where it could be reviewed around the clock. By doing so, the members of the association would have more immediate access to the packet and would not be denied access because of work schedules. However, the statute that governs the availability of the packet does not require that the packet be available at any given moment, nor does it provide for whatever is most convenient for members. Instead, it requires that the packet be made *available for inspection* at the same time it is furnished to the board or directors. As long as an association makes the packet and any other agenda materials available for inspection at the same time as it provides those documents to the board of directors, the association would be in compliance with the law. There does not seem to be an allegation here that the Association did not make the documents available for inspection at the required time, instead the complaint is related to the manner in which they are made available. I do not find a violation of common interest community law.

The requirement that an owner sign a document evidencing his or her inspection of the packet is a legal issue as such signature is not required by common interest community law and is not discussed in the Property Owners' Association Act. The Association is not denying inspection of the agenda packet; it is requiring a signature in order for an owner to make that inspection. Because this is a legal issue not addressed in the Property Owners' Association Act, this office cannot provide a determination as to whether the signature requirement is valid. As for the request that the Association consider the complaint in an open meeting, this office cannot provide a determination on that matter since no allegation was made that the Association was in violation of common interest community law, and at the time of the complaint, the consideration of the complaint had not yet even taken place. We cannot provide a determination for something that has not happened.

¹¹ Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee thereof.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather S. Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
West Neck Community Association