



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

May 20, 2019

Ralph S. Northam
Governor

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2019-02546

Brian Ball
Secretary of
Commerce and Trade

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

The Complainant submitted a complaint to the Association, dated February 6, 2019. The Association provided a response to the Complainant dated March 5, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 10, 2019 and received the same date.

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 alleged that the Association violated §55-510.1(B)¹ of the Property Owners' Association Act by failing to provide notice of the consideration of a prior Association Complaint to all members of the association. The Complainant stated that "the hearing must be held in a properly noticed meeting affording PSCA members the opportunity to attend" and further stated that "[t]he hearing may, with the discretion of the complainants, be conducted in executive session."

The Association responded to the Complaint by writing that it did comply with the notice requirements, and posted an emergency meeting notice. The Association wrote that "[n]otice of the emergency meeting was posted on the website and a (*sic*) sent to owners for whom email addresses are on file. Therefore, the Board agreed that the complaint should be denied."

There is simply not enough information included with the NFAD for this office to determine whether a meeting was properly noticed or not. The Complainant believes there was failure to provide notice, and the Association stated that it did provide proper notice. Without solid evidence one way or the other, there is simply no way to make a determination about this matter. I will note that executive sessions are not held at the discretion of complainants as stated in the Complaint. An executive session is only appropriate when it fully complies with the language contained in §55-510.1(C)² of the Property Owners' Association Act.

Required Actions

While no specific action is required of the Association in relation to the alleged notice violation, it does appear that the Association failed to hand deliver, mail or email the final determination within seven days of the Association's decision as required by the

¹ B. 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.

A lot 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 lot owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association's board of directors or any subcommittee or other committee thereof conducting the meeting.

² The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

Regulations (18 VAC 48-70-50(8))³. The final determination letter was dated March 5, 2019, but no evidence could be provided by the Association that demonstrated the letter was sent any sooner than April 6, 2019, more than thirty days later. The final determination letter states that consideration of the Complaint took place on February 28, 2019. In light of the fact that this delay appears to be a violation of the Common Interest Community Ombudsman Regulations, this matter will be referred to the Complaint Analysis and Resolution section at the Department of Professional and Occupational Regulation for further review.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association

³ 8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.