



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

January 6, 2020

Mary Broz-Vaughan
Director

Complainant: Luis Lerin
Association: Three Ships Landing Condominium Association
File Number: 2020-01334

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 August 18, 2019 and filed on the 19th of September 2019. The Association provided a final decision to the Complainant dated October 30, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 6, 2019 and received November 15, 2019.

Authority

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.

Determination

A portion of the Complaint submitted to the Association is related to the Association's architectural guidelines and whether a board member can serve on the board of directors if he or she is in violation of the governing documents. As noted above, complaints that do not stem from violations of common interest community law or regulation do not fall under our jurisdiction and we cannot provide guidance or a determination on them.

The Complaint did allege a violation of common interest community law, namely that the Complainant had not been provided the right to communicate with other owners. Under §55.1-1950¹ (formerly §55-79.75:1) of the Condominium Act, associations must provide a method communication for owners to communicate among themselves and for owners to communicate with the executive board of the association.

The Association responded to the Complaint by stating that it did "provide a 'reasonable, effective and free' method of communication with the Board of Directors and other owners" by maintaining a Facebook page, and also said that the Association was in the process of installing a bulletin board for the same purpose. The Association believes that it is in compliance with the applicable statute.

Facebook and a bulletin board may not be the perfect methods of communication within an association, but they do appear to be sufficient to meet the requirements of the Condominium Act to the extent that we can make such a judgment. Since the terms reasonable and effective are not defined in the Condominium Act, it is difficult to determine what exactly constitutes reasonable and effective. While everyone may not want or choose to use Facebook, I do think that a Facebook page coupled with a bulletin board would be sufficient to meet the requirements of the statute.

There were several concerns related to the complaint procedure itself that need to be addressed. It appears, based on the NFAD, that the Association failed to provide the Complainant a copy of the association complaint procedure when requested and did not mail or otherwise deliver the final determination to the Complainant within seven days of that decision. There appeared to be a thirty-day span between the date of consideration and the date of the final determination.

Required Actions

The Association, if it has not already done so, must ensure that it installs and makes available the bulletin board it referenced in its final determination. The Association must

¹ A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.

make certain that the association complaint procedure, as required by the Common Interest Community Ombudsman Regulations, is readily available (18 VAC 48-70-60)² when requested, and that any future final determination is provided to a complainant within the required seven days (18 VAC 48-70-50)³ of the date the decision was made. A failure to meet these requirements may result in a referral of this matter to the Common Interest Community Board.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Three Ships Landing Condominium Association

² A. The association complaint procedure must be readily available upon request to all members of the association and citizens.

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.