



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

January 13, 2021

Mary Broz-Vaughan
Director

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2021-01362

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 17, 2020. The Association provided a response to the association complaint dated November 13, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 11, 2020 and received the same date.

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 §54.1-2354.4 (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.

Determinations issued by the CICO are based solely on the association complaint submitted to the association, the final decision or determination from the association, and

any documents that were part of the original association complaint or the association's decision. New information that was not included with the original complaint or the association's final decision will not be reviewed or utilized as part of the determination, unless such information is related to the way in which an association carried out its complaint process.

Determination

In this complaint, the Complainant has alleged that the Association failed to provide proper notice of a pesticide application. Under §55.1-1818¹ of the Property Owners' Association Act, an Association must provide forty-eight hours' notice prior to the application of any pesticide. The Complainant stated that an herbicide had been applied on May 7, 2020 and no notice of this application was provided to the owners.

The Association responded to this complaint by acknowledging that proper notice as required by §55.1-1816 (I believe the Association meant §55.1-1818) was not provided prior to the application of a pesticide on May 7, 2020. The Association stated that it had brought this to the attention of its landscape contractor who has been directed to give proper notice going forward. The Association further wrote that the proper notice has been given for a subsequent pesticide application.

The Association was in violation of §55.1-1818 when it failed to provide proper notice of a pesticide application.

Required Actions

The Association needs to take whatever action is necessary to make certain that notice of pesticide application is provided to the owners in full compliance with §55.1-1818 of the Property Owners' Association Act. A failure to do so 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
Purple Sage Cluster Association

¹ The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.