



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

December 17, 2021

Complainant: Lynn Cisar
Association: Great Creek Landing Property Owners' Association
File Number: 2022-01064

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 June 11, 2021. The Association provided a response to the association complaint dated October 28, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 11, 2021 and received November 17, 2021.

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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged three complaints. In her first complaint, the Complainant alleged that the Association, in violation of §55.1-1817 of the Property Owners’ Association Act,¹ “failed to provide an effective method of communication for lot owners to communicate among themselves regarding any matter concerning the Association.” The Complainant said that the Association has a Facebook account, but it prevents owners from communicating among themselves. The Complainant stated that members cannot post directly, but instead must have their posts approved, that posts are deleted, commenting is turned off and members are blocked. She also wrote that non-owners are given access to the Facebook page and use it to market goods or to criticize others and that not all Board members are reachable via direct email but did say they are all members of the Facebook page.

In the second complaint, the Complainant alleges a failure by the association to provide access to records in the required 10-day time period as set forth in §55.1-1815² of the Property Owners Association Act. The Complainant requested an inspection report from the Association and did not receive it within ten days.

The third complaint alleged that the Association failed to consider certain capital components in its financial forecast and annual budget, a violation of §55.1-1826(C).³ The

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

² 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 an association managed by a common interest community manager and 10 business days’ written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

³ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;

Complainant alleged that the current estimated replacement cost, estimated remaining life, and estimated useful life of capitol components were not disclosed to members and a reserve study is not available.

In response to the complaints, the Association wrote that it believed it met the requirements of §55.1-1817 of the Property Owners' Association Act in its provision of a means of communication. The Association stated that at the time the Complainant requested documents, there were no official records available to provide to the Complainant and therefore there was no violation of §55.1-1815. Finally, in relation to the allegation regarding the capital components, the Association said that it had not had time to assess, examine and compile the requested documents. It further noted that it does not consider the findings official until they have had a chance to review and discuss during a board meeting.

I cannot fully determine if there has been a violation of §55.1-1817 since the Association does have a method of communication (Facebook) and it appears to allow communication with the board and among the owners. Unfortunately, the Complainant did not provide any evidence supporting her allegations and the Association did not provide a response that addressed any of the allegations specifically, making it very difficult to understand the situation in context and determine if there has been a violation of the statute.

I would note that of the issues raised regarding the method of communication, there is nothing in the law that specifically prohibits an association from reviewing posts or removing them. Many associations adopt policies or rules governing the posting of information on association websites. Such policies or rules would not fall under our authority. Allowing non-members to utilize the method of communication does not appear to be a violation of the statute as it does not deny anyone the right to communicate, although it may cause some owners to choose not to communicate. Poor behavior by members of the Facebook page or sales of items on the page are not addressed in the statute and therefore do not fall under our authority. If the Association has deleted posts or denied comments, such action may be a violation of the statute, but without evidence or information regarding specific instances of this alleged action, I cannot determine if there has been such a violation.

A failure to provide access to records within 10 days is not a violation of §55.1-1815 if the Association does not have the records. I would note that the 10-day timeframe only applies to the examination of records. There is no specific timeframe for providing copies of records upon request. According to the Association, the requested records were not part of the Association's books and records at the time of the request. It was not clear from the Complaint if the Complainant ever received these documents,

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

nor was it clear from the Association's response if these documents ever became part of the Association's books and records.

A copy of the Association's budget was not included in the NFAD, making it difficult for this office to determine if the Association failed to include the necessary language in that budget, as outlined in §55.1-1826(C). The Association's response that it had not had time to determine a comprehensive, long-term approach regarding the capitol components is understandable, but the law requires that all budgets contain the language specified in the statute. I cannot make a determination that the language was not included since I have no evidence of that, but if it was not included, it needs to be. The allegation that a reserve study is not available is confusing since there did not appear to be any evidence in the NFAD that the reserve study had been requested by the Complainant. Without evidence that the reserve study had been requested and not provided, this office cannot determine if the Association failed to carry out a reserve study.

Required Actions

The Association needs to review its communication method to ensure that it is not denying anyone the right to communicate with the board and among owners. In addition, if the language required by §55.1-1826(C) is not included in the Annual Budget, the Association needs to revise that budget and include that language.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Great Creek Landing Property Owners' Association