



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

January 20, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Barbara Jones
Association: Plantation Woods Condominium Association
File Number: 2022-01075

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 September 7, 2021. The Association provided a response to the association complaint dated October 26, 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 submitted two complaints to the Association. There was also a great deal of information included in the original complaint that was not related to common interest community law and instead was related to either interpersonal issues or the governing documents of the Association. As is always the case, we cannot address those types of issues in this Determination since we have no authority to do so.

The first complaint alleged that the Association “denies homeowner access to certain association records on website platform, refuses to allow unmonitored comment page for community communication between homeowners and with board members and refuses to allow homeowner input and participation in website management.” The Complainant believes these actions have resulted in violations of several provisions of the Condominium Act, specifically §55.1-1939(1),¹ §55.1-1949(B)(3),² §55.1-1950(A) and (B),³ and §55.1-1935 (A) and (B).⁴ The Complainant wrote that the Association developed a website, and that the Complainant assisted the person in charge of doing

¹ Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55.1-1945, including records of all financial transactions;

² 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 the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

³ 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.

B. Except as otherwise provided in the condominium instruments, the executive board shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

⁴ A. Unless expressly prohibited by the condominium instruments, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.

B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

so. The Complainant made numerous suggestions regarding what should be posted and how the website should be run. She was later terminated as website aide by the person in charge of it. The Complainant alleged that the Association does not have a method of communication as required by §55.1-1950. She also alleges that the Association has failed to provide “adequate explanation to justify action and cost decisions.” She further stated that homeowners have a right to information regarding association management and board members have a responsibility to provide answers to homeowner questions. Finally, the Complainant wrote that she had requested electronic copies of certain documents and was denied them. The Complainant did not include copies of her requests for these documents so this office cannot determine if the documents were properly requested and therefore cannot determine if the Association had an obligation to provide them.

The Complainant asked that the Association update meeting minutes, financials, the annual budget, the reserve study, board meeting packets prior to each meeting, create a communication page to allow owners to communicate with each other and the board, identify administrative access levels to allow participation of owners in website management, and limit use of website by association manager. None of these requests is a requirement under the Condominium Act (as will be addressed below) so it is at the option of the Association whether they wish to meet these requests.

The Complainant did not specify how she believed the Association had violated the various statutes she included in her complaint. There was no allegation that the Association had failed to provide access to books and records contained in the complaint, only that the Association had not included this information on its website. As such, no violation of §55.1-1939.1(1) can be found. The inclusion of §55.1-1949(B)(3) as a law violated by the Association does not appear to have merit, since there was no allegation or evidence that the association was not providing agenda packets, only that they were not provided electronically, which is not required by the statute.

The Complainant's reference to a violation of §55.1-1950(A) and (B) does not have a basis in the law nor was there an allegation that no method of communication existed, only that the Association was not providing a method via the website. Associations are not required to utilize electronic methods of communication under the statute cited by the Complainant, instead they may use electronic methods if they so choose. Finally the reference to §55.1-1935 is not appropriate as that statute allows for the use of technology to provide notice and other actions via electronic means, but it does not require that such actions be carried out electronically.

In her second complaint, the Complainant alleged that due to an inability to achieve quorum over the last three years, there has been no election of board members and instead, friends and neighbors are selected to fill vacant positions that become available during the year. The Complainant also finds it inappropriate that committees are chaired

by board members and not homeowners. The Complainant references §55.1-1939.1(5),⁵ §55.1-1953(E),⁶ §55.1-1935(D),⁷ and §55.1-1952(C).

As was the case with the first complaint, the Complainant did not really explain how the Association violated the referenced statutes. §55.1-1939.1(5) provides for a right to serve on a board if duly elected. However, if an association is not able to obtain quorum, they are not in violation of this law, since it is a failure on multiple levels if quorum is not achieved. It is not solely the responsibility of an association to obtain quorum - there must also be sufficient interest by the owners to participate in these meetings to help make quorum. In fact, §55.1-1952(C) seems to indicate that the responsibility for quorum falls on both the association and its owners, as it allows either a unit owners' association or any unit owner entitled to vote to petition the local circuit court to order an annual meeting.

There was nothing in the complaint that indicates an owner has been denied a right to vote under §55.1-1953(E). As noted above, a failure to obtain quorum is not necessarily the sole fault of an association, and appointments of board members does not usually require voting. It is unclear how the friends and neighbors were selected to fill open positions, and without more information this office cannot determine that a violation of this law has taken place.

Finally, §55.1-1935(D) is a statute that simply allows for electronic voting. There was nothing in the complaint that indicated anyone had been denied the right to vote electronically.

The Condominium Act does not specify who can serve on a committee or sub-committee. Whether board members can chair these committees is dependent upon the condominium instruments and not the law.

The Complainant requests that the Association provide for absentee mail-in voting and electronic voting, and that it develop electronic voting guidelines. She asks that the Association post open positions at least 30 days prior to filling a position, develop a board member disclosure form to protect against conflicts of interest, and

⁵ Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:
5. The right to serve on the executive board if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

⁶ E. Unless expressly prohibited by the condominium instruments, a unit owner may vote at a meeting of the unit owners' association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the executive board has adopted guidelines for such voting by electronic means. Unit owners voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

⁷ D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

provide information to owners regarding expectations and time commitments when serving on the board in order to decrease turnover of board members.

The Association should provide for voting options as set forth in §55.1-1953(E) if its governing documents so provide. The Association can choose to post open positions 30 days in advance of an election, require disclosure forms or counsel candidates on their responsibilities, but there is no requirement under the law to take such actions.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Plantation Woods Condominium Association