



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 29, 2022

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: John Shumate
Association: West Neck Community Association
File Number: 2023-00303

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 an association complaint to the Association dated June 8, 2022. The Association provided a response to the association complaint dated July 19, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 1, 2022 and received August 2, 2022.

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.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that the Association is in violation of the Property Owners' Association Act, specifically §55.1-1817¹ of that act. The Complainant wrote that the current method of communication is uni-directional and is dependent upon the weekly newsletter or the occasional board communications from the management company. The Complainant believes the statute requires multi-directional communication, in the form of communication to the board of directors and communication among the owners.

The Association's response to the complaint was that it has a bulletin board for lot owners to communicate among themselves and with the board of directors. The Association also wrote that it is "looking into more advanced technology to further encourage communication within the Association."

The Complainant included additional information that was not part of the original complaint and therefore cannot be considered since the Association has not had the opportunity to respond to the new material.

The use of bulletin boards for communication can be a valid method of communication, as long as such use is reasonable, effective, free, and appropriate to the size and nature of the association. Based on DPOR records, the Association has 937 lot and units. It would be unusual for a physical bulletin board to provide sufficient space and access to meet the demands of communication among such a large number of members and be able to meet the requirements of the law – especially the effective and appropriate portion of the statute. Unless the bulletin board is checked daily, it may also not provide an effective method of communication with the board.

I cannot provide an absolute determination that the Association does not have a method of communication that meets the requirements of the Property Owners' Association Act, since I do not have enough information available to me to do so. I am concerned that the existing method may not be sufficient. I ask that the Association

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.

consider whether the bulletin board fully meets the requirements set forth in the Property Owners' Association Act and take whatever action may be necessary to update the method of communication to meet those requirements and ensure that association members can communicate with their board of directors and among themselves.

Required Actions

The Association needs to review its current method of communication and determine if it meets the letter of the law outlined in §55.1-1817 of the Property Owners' Association Act. I ask that it do so within 30 days of the date of this Determination. Upon completion of the review, please provide me a brief summary of your findings and whether you will be updating the method of communication. I believe it is likely that you will need to update your current method in order to meet the requirements of the statute.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
West Neck Community Association