



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 7, 2023

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Alan Kennedy
Association: Burgesses Quarters Owners Association
File Number: 2024-00169

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 13, 2023. The Association provided a response to the association complaint dated July 11, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 19, 2023 and received July 24, 2023.

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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant has alleged that the Developers of the Association have failed to comply with certain York County development requirements as evidenced by a compliance letter from the County Administrator. The Complainant further alleges that owners have requested records and notices that are required by state law, but the Association has failed to provide them. In addition, the Complainant states that the Association has failed to respond to written requests, failed to hold meetings, failed to provide notice, and extended declarant control unlawfully. He alleges violations of 55.1-1807,ⁱ 1815,ⁱⁱ and 1817ⁱⁱⁱ of the Property Owners' Association Act and §55.1-1943 of the Condominium Act.

The Association responded to the complaint by acknowledging that it has not held an in-person annual meeting since 2019 and noting that it has scheduled an annual member meeting for August 10, 2023 and will provide notice as required by statute. The Association stated that it has provided requested documents as well as information on how to access documents on the association portal, but that it did not provide certain documents that belonged to the developer and not the association.

The Association wrote that it is in the process of implementing a communication method for the community and will work to have it in place within the next 60 days. In response to the allegation that the Association was in violation of the Condominium Act, the Association noted that it is not a condominium, and that act is therefore inapplicable. It further explained its declarant control period which is provided in the governing documents.

This office has no authority to require the Association to address the compliance letter received from the county. That is not a violation of any of the laws that fall under our authority. The Complainant listed several statutes that he alleges the Association violated, but nothing was included with the NFAD to provide background information or

evidence of the allegations. A violation of §55.1-1807 would encompass numerous different issues and no information was provided as to how, specifically, the Association was in violation of that statute. Because of this, we cannot provide a determination as to whether the Association had violated the statute. As for the other statutory allegations, it appears that the Association has addressed the Complainant's concerns in its final decision.

This office cannot determine whether the Association's response was complete, meaning, for example, we cannot determine if the Complainant was provided access to all the documents he requested since the requests themselves were not provided as part of the initial complaint. Nor can we determine exactly what meetings were not held - is this allegation a reference only to annual member meetings or to board meetings as well? The Association did state in an email that "meetings" were not held during the pandemic, but again, it is not clear what type of meeting it was referencing. The Complainant did include emails where he had asked questions of the Association, but there is no legal requirement under common interest community law that an association must respond to questions. It does appear, since the Association is in the process of creating one, that it does not currently have a method of communication in place.

Required Actions

It is unclear whether the Association has held no meetings at all for the last four years, or no annual member meetings. It does appear that it has committed itself to holding an annual member meeting within the next week. Going forward, the Association must ensure that it holds meetings in accordance with the Property Owners' Association Act and its own governing documents. I ask that the Association email me within the next two weeks to advise me if it held its annual meeting as planned, and if it did not, what reason prevented it from holding the meeting and when the rescheduled meeting will be held. My email address is heather.gillespie@dpor.virginia.gov.

The Association admitted that it did not have a method of communication in place, which is a violation of §55.1-1817. But it did say that it is in the process of creating a method and hopes to have it complete in the next month. Please email me no later than September 15, 2023, to provide an update on this project and what method of communication was adopted.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

ⁱ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § ~~55.1-1815~~, including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;
3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § ~~55.1-1815~~ and § ~~55.1-1816~~;
4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § ~~55.1-1819~~, and the right of due process in the conduct of that hearing; and
5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § ~~55.1-1828~~.

ⁱⁱ A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

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.

ⁱⁱⁱ 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.



cc: Board of Directors
Burgesses Quarters Owners Association