



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

February 13, 2014

Complainant: Davida Scott
Association: Casey Meadows Homeowners Association, Inc.
File Number: 2014-02085

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

Complainant submitted a complaint to the Association dated September 10, 2013. The Association provided a Notice of Final Decision (NFAD) to the Complainant dated December 10, 2013. The NFAD was received by this Office on January 9, 2014.

Determination

The Complainant submitted a complaint to the Association in which she set forth five separate allegations. The first allegation was that the Association failed to provide access to all books and records. The Complainant specifically alleged that a former board member failed to provide access to the books and records he maintained, but other board members did meet with the Complainant and provided access to the books and records they had on hand.

We do not have jurisdiction over individual board members or former board members. If an individual has failed to return the books and records of an association to the existing board, as was alleged in the Complaint, there is nothing that this office can do to require the individual who is withholding the books and records to return them, as this not an issue addressed in common interest community law or regulations.

The second allegation contained in the Complaint was that the Association failed to update the agent's address with the state. It was not clear if the Complainant was alleging a failure to update the State Corporation Commission or a failure to update the Common

Interest Community Board. It appears that the State Corporation Commission has a current address for the registered agent, but because neither this office nor the Common Interest Community Board (CICB) has jurisdiction over matters related to the State Corporation Commission, the review to determine the Association's status was merely cursory. A review of the records on file with the CICB indicated that the association has failed to update its registration for the current year. This is a violation of both state law and regulation, and must be addressed immediately.

The third allegation contained in the Complaint stated "failure to receive mail at agents address." This is not an allegation over which this office has jurisdiction as no allegation of a violation of common interest community law or regulation was made, and therefore no response or determination can be provided. This is also true of the fourth allegation, which is related to possible embezzlement by board members. If true, such an act could certainly be criminal in nature, but embezzlement is not a violation of common interest community law or regulations and therefore this office has no jurisdiction to provide a determination regarding such alleged actions.

The fifth and final allegation contained in the Complaint is that the Association has failed to provide notice of board meetings. Virginia Code sections 55-510(F) and 55-510.1 of the Property Owners' Association Act (POAA) clearly lay out the notice requirements for association meetings and board meetings. No matter what type of meeting is being held by the Association, members of the Association must be provided notice that complies with the POAA. While the annual meeting of an association is obviously intended to be open to all members, so, too, are all other meetings of the Association, as evidenced by §55-510.1(A):

"All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to **all** members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section." (emphasis added)

While it is difficult to prove a failure to provide notice, the allegations, if true, are serious and in direct violation of the POAA. In its final decision, the Association admitted that it had failed to provide proper notice for several different meetings, including committee meetings and executive sessions.

Required Actions

Because we do not have jurisdiction over an individual member or former member of the board, we have no authority to require such an individual to turn over books and records of the Association that he may have in his possession. I would, however, remind the Association of its responsibility to maintain the books and records in accordance with the Property Owners Association Act, specifically §55-510(A) which states:

"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.”
(emphasis added)

This is the minimum requirement that must be met in order to comply with the POAA, however the Association's own governing documents may set forth additional requirements for maintenance of the books and records. If the information contained in the Complaint is true, and a former member of the Association has books and records that rightfully belong to the Association, the Association needs to determine how best to obtain those books and records so that they are accessible to all members and are maintained by the Association in a manner that complies with both the POAA and the Association's governing documents.

As part of my review of the NFAD documents and the Association's record on file with the CICB, I learned that the Association is not currently registered with the CICB which is a violation of 18VAC48-60-80 and §55-516.1. The registration expired November 30, 2013. The Association has 30 days from the date of this letter to ensure that it has submitted its Annual Report and completed all requirements necessary to register the Association.

Finally, as noted previously, a failure to provide notice of meetings is a direct violation of the POAA. The Association must provide notice of all meetings. Whether it is a committee meeting, board meeting or the open portion of an executive session, every owner in the association has the right to be given notice of every meeting and to attend every meeting (excluding executive sessions that are being held in accordance with the POAA). If this office receives any additional NFADs containing an association complaint alleging that the Association has continued to hold meetings without notice after the date of this letter, the matter will be referred to the CICB.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Casey Meadows Homeowners Association, Inc.