



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 17, 2014

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Navin
Association: Edgemoore Homeowners Association, Inc.
File Number: 2015-01508

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 July 28, 2014. The Association provided a final determination to the Complainant dated November 11, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 15, 2014 and received November 18, 2014.

Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant set forth seven separate complaints related to the actions of the Association. In addition, the Complainant requested certain actions in conjunction with the stated complaints. The requested actions will not be addressed by this Determination as they were not complaints, per se, and because we cannot require the Association to take action if, as was the case in the bulk of these complaints, there has been no violation of common interest community law or regulation.

The first complaint was that generally accepted accounting practices are not being followed, based on the Association's failure to have a financial audit completed. The Association responded in its Final Decision by stating that it has had several analyses of transactions completed and pursuant to a change in the by-laws of the Association, will hire a firm to review the association financials every five years. There is nothing in the Property Owners' Association (POA) Act that requires an association to have an audit completed, and any such requirement would be contained within the governing documents. The Association has not violated any provision of common interest community laws or regulations by failing to complete an audit. If the governing documents call for an audit, that is a matter outside the scope of jurisdiction for this office.

In his second complaint, the Complainant stated that he had not been allowed to see the Treasurer's records of homeowner dues paid in 2012. The Association responded by noting that it will not provide access to individual member checks, but had provided the Complainant a list of payments by house number as well as the amount each house paid. It appears the Association has provided the information it has in order to comply with the Complainant's request. I agree with the Association that they are not required to provide information that may be part of an owner's file, as outlined in §55-510(C)(9) of the POA Act.

In the third complaint, the Complainant stated the Board refused to allow distribution of the 2012 financial report commissioned from an Association member and has not distributed the report on the 2013 financials. The Complainant also asks the Association to make these documents available in electronic format. The Association responded that the reports will be available at the 2015 annual meeting and they do not have a way of distributing them electronically. There was no reference to any common interest community law or regulation that would require the Association to distribute these financial reports or make them available electronically. Based on the information provided, I do not find that there has been a violation of common interest community law or regulations.

The fourth complaint was that the Association failed to have an audit of the 2011 books as it had previously agreed. As noted earlier, associations are not required by common interest community law or regulations to conduct audits. There is no violation of common interest community law or regulation for a failure to conduct an audit.

The fifth complaint was that the Association did not conduct any financial review by a non-Board member for 2010. There is no requirement in common interest community law or regulations that financial reviews be carried out by an individual who is not on the

board of directors for an association. Therefore there is no violation of common interest community law or regulations.

The sixth complaint was related to the failure of the Association to distribute updates regarding the reserve study. The Complainant noted that this update was not provided at the Annual Meeting, nor was there any such update apparent in the minutes for the nine months prior to the Annual Meeting. The board of directors is required to review and adjust the annual budget as it believes necessary in light of the existing reserve study and the requirements for funding (§55-5141(B)). There is not a requirement in common interest community law or regulations that updates regarding the reserve study be distributed to owners.

The seventh complaint stated that the Complainant was not permitted to see a tally of the proxy votes submitted at the Annual Meeting. The Association subsequently provided a count of the votes, but noted that it could not provide the actual proxies as those proxies contained member information. I do not find that a violation of common interest community law or regulations has taken place if the proxies contained individual member information that is appropriate for withholding under the exclusions provided in §55-510 of the POA Act.

Required Actions

No violations of common interest community law or regulations were found in the Complaint submitted by the Complainant, therefore there are no actions required by the Association as a result. However, I would note that the Association's final decision failed to provide contact information for this office, which is required under the Regulations. For future reference, the Association needs to ensure that not only does it provide notice of a complainant's right to file a notice of final adverse decision with this office, it must also provide the contact information for doing so.

"The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information."
(18 VAC 48-70-50)

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Edgemoore Homeowners Association, Inc.