



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 25, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: James Moran and Robert Sledzaus
Association: Purple Sage Cluster Association
File Number: 2016-03360

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 February 18, 2016. The Association provided a final determination to the Complainant dated May 4, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 10, 2016 and received June 3, 2016.

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 has alleged that the Association has violated §55-510.1(A)¹ of the Property Owners' Association Act. The Complainant cites two examples of a violation of this portion of the Act, one where the President of the Association appointed two members to the Board of Directors prior to a board meeting, and another where the Board of Directors and the Property Manager met to approve a budget and an assessment increase. In addition, the Complainant alleges that the Board of Directors assigned officers without an open meeting as evidenced by a letter to all owners, and finally, that the Board of Directors is using informal work sessions to avoid open meeting requirements, based on an email from the President of the Association.

In its response to the Complaint, the Association stated that it needed additional time to consider the issue of board member appointment. It did, however, address the other three concerns set forth in the Complaint. The Association stated that "the Board reaffirms its commitment to open meetings" and "[a]ll members of the board are new to Board service and are learning the rules relating to Association meetings." The Association also stated that "the Board will pursue training with respect to Association meeting requirements."

The Complainant provided clear examples of meetings that were held without notice. Ensuring that all meetings are open to all members of an association is one of the most basic requirements under common interest community law. There are times when providing notice may prove cumbersome, the issue to be discussed may be minor, or the board simply does not wish to deal with contentious or angry owners. While these are all understandable concerns, there is really no situation, short of a bona fide emergency, where the open meeting requirements should not be followed.

Required Actions

The Association must adhere to the open meeting requirements of the Property Owners' Association Act. "All meetings of the board of directors, including any subcommittee or other committee thereof, shall be open to all members of records." In addition, notice of all meetings must be provided in a manner that comports with §55-510.1(B)² of the Property Owners Association Act. Continued failure to hold open meetings and provide notice of meetings may result in a referral of this matter to the Common Interest Community Board for any enforcement action it may deem appropriate.

¹ 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. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55-510.

² Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Gillespie". The signature is written in a cursive, flowing style.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association