



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 30, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2017-00531

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 on February 18, 2016. The Association provided a final determination to the Complainant dated July 18, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 27, 2016 and received August 16, 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 improperly adopted bylaws when it failed to vote on the bylaws in an open meeting. A failure to hold an open meeting is a violation of §55-510.1¹ of the Property Owners' Association Act. The bylaws were adopted in May of 2012. The Complainant further alleges that as a result of these improperly adopted bylaws, the Association has taken action over the years that was improper and not in compliance with the Property Owners' Association Act.

In its response, the Association stated that "the Complaint is denied."

More than four years have passed since the bylaws were adopted and as a result, this office, the Common Interest Community Board, and this Agency, have no authority to investigate or take any action related to the allegation that the Association held a meeting that violated the Property Owners' Association Act when it adopted the bylaws. §54.1-307.1(A) of the Code of Virginia addresses the statutory time frame in which a complaint can be submitted to this Agency and ultimately investigated. Specifically, the statute states

Except as otherwise provided in § 36-96.9 and subsections B and C of this section, any complaint against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within Subtitle II (§54.1-200 et seq.) of this title or any of the programs which may be in another title of the Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be investigated by the Department, shall be made in writing, or otherwise made in accordance with Department procedures, and received by the Department *within three years of the act, omission or occurrence giving rise to the violation* (emphasis added).

Because we have no jurisdiction over any statutory or regulatory violation after three years, a determination cannot be provided regarding the allegation that the Association violated §55-510.1 of the Property Owners' Association Act.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association

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. 55-510.1(A)