



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 24, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Beverly Mack
Association: Mill Point Community Association
File Number: 2016-00216

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 one undated complaint consisting of four separate complaints to the Association. The Association provided a final determination to the Complaint on June 30, 2015. The Complainant then submitted the Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 29, 2015 and it was received July 30, 2015.

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 submitted a Complaint with four separate allegations of violations of the Property Owners' Association Act. "Complaint #1" alleged that contrary to §55-510 of the Code of Virginia, the Association had failed to release board minutes of a particular meeting.

"Complaint #2" details a request to be notified of board meetings on a continual basis and a failure on the part of the Association to do so. The right to this notification is outlined in §55-510.1 of the Code of Virginia:

"A lot owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the lot owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the board of directors."

In "Complaint #3," the Complainant alleges that the Association has refused to establish a method of communication for members as required by §55-510.2 of the Code of Virginia. This portion of the Code states

"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."

The Complainant claims that the bulletin board has been commandeered by a board member, that many of the owners live in other states, and that the newsletter does not include letters from owners. The Complainant does not believe sending correspondence by mail as a method of communication is a reasonable solution due to the cost.

The fourth complaint, "Complaint #4," concerns §55-510(B) of the Code of Virginia and alleges that the Association has failed to make agenda packets available to members in a timely manner.

In its Final Determination, the Association responded to Complaint #1 by stating that the draft board minutes have been provided to the Complainant and this was confirmed by the Complainant in her cover letter. There does not appear to be a violation of common interest community law or regulation related to the minutes at this time.

In its response to Complaint #2 the Association states that the Complainant is notified of any non-scheduled meetings, and that the board meetings are printed in the newsletter. It is not clear from the NFAD how the newsletter is distributed. The Code of Virginia details the notice requirement as follows: "Notice of the time, date, and place shall

be sent to any lot owner requesting notice (i) by **first-class mail or e-mail** in the case of meetings of the board of directors or (ii) by **e-mail** in the case of meetings of any subcommittee or other committee of the board of directors.” If the newsletter is being sent by first-class mail or by e-mail, and the newsletter contains notice of upcoming board meetings, it would appear that notice of meetings is being provided in a manner that comports with the Property Owners’ Association Act, since that Act does not specify that the notice must be sent separately or apart from any other documents or information.

In response to Complaint #3 alleging a failure to provide a method of communication that complies with the Property Owners’ Association Act, the Association simply stated that “they do comply with code.” Without more information from the Association, we can only utilize the information provided by the Complainant. In her Complaint, the Complainant included a prior response from the Association to an inquiry from the Complainant. In that response, the Association stated that it had provided the Complainant with contact information for all owners in the community and the Complainant could use that information to email or correspond with others. Providing contact information would not be sufficient to meet the requirements of §55-510.2 as that portion of the Property Owners’ Association Act requires that the Association “**establish** a reasonable, effective, and free method” of communication. Giving an owner the association membership list is already required under §55-510, and does not result in the establishment of a method of communication.

The Complainant did include pictures of the bulletin board that is provided by the Association, and in many instances a bulletin board would be sufficient for the purpose of providing a method of communication. In this instance, if the bulletin board is being monopolized as the Complainant alleges, thus making it difficult or impossible for another owner to use this system of communication, it would appear that the Association would need to address the “effective” aspect of §55-510.2 and institute some method by which all owners could freely use the bulletin board rather than just one. However, it is not possible for this office, based on the information provided, to make a determination as to whether the bulletin board is being monopolized and whether the bulletin board is providing a method of communication that complies with §55-510.2. The Association is not required to include association member letters in its newsletters.

Finally, in its response to Complaint #4, regarding agenda packets, the Association states that board packages are in draft form until approved by the board at the beginning of a board meeting and therefore are not made available to owners. Once approved those packets are made available to owners. §55-510.1 does not speak to prior approval of these packets. The provision states that “a copy of all agenda packets and materials furnished to members of an association’s board of directors ... shall be made available for inspection by the membership... **at the same time** such documents are furnished to the members of the board...” The only materials that can be excluded, according to §55-510.1 would be any materials “relating to an executive session.” Therefore, the Association does need to provide access to at least one copy of the agenda packets and materials at the

same time such packets and materials are provided to the board (or committee or subcommittee).

Required Actions

The Association needs to ensure that it is providing notice of meetings pursuant to §55-510.1. A failure to provide continual notice to owners who have requested such notice may result in a referral of the matter to the Common Interest Community Board.

The Association needs to assess its current method of communication. While §55-510.2 is somewhat subjective in nature, and it is difficult for this office to determine what truly is reasonable and effective for any one association in terms of a method of communication, the Association does need to monitor the situation to determine if the existing bulletin board is sufficient or if there might be another method of communication that would be more reasonable and more effective.

The Association must ensure compliance with §55-510.1 and make one agenda packet and accompanying materials (except for those materials that may be excluded because they pertain to an executive session) available for inspection by the membership "at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee thereof." A failure to comply with this provision of the Property Owners' Association Act may result in a referral of the matter to the Common Interest Community Board.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Mill Point Community Association