



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

November 3, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Karin Smerczynski
Association: Silcott Meadows Homeowners Association
File Number: 2016-01066

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 her undated Complaint to the Association and the Association provided a final determination dated October 8, 2015. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 21, 2015 and received October 23, 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) of the 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(C) of the Property Owners' Association Act by adopting "**Internal Operating Procedures**" for the Architectural Control Committee that state "all committee discussions are in Executive Session."

The Association stated, in its final decision, that the Board of Directors "voted to deny your complaint."

The Complainant has not alleged that an actual violation of common interest community law has taken place, i.e. that a meeting was held in executive session that should have actually been a meeting open to the members. Instead, the Complainant has alleged that the governing documents contain language that may violate common interest community law. This office has no authority to review and interpret any governing documents of an association and therefore a determination cannot be provided as to whether the Association has violated, or is violating, common interest community law by including a provision in its "**Internal Operating Procedures**" that all committee meetings be held in executive session. Until an executive session is held that does not comply with the requirements of §55-510.1(C) there has been no violation of common interest community law as it pertains to executive sessions.

Required Actions

I encourage the Association to make certain that if it does hold executive sessions, it ensures that any such executive session fully complies with common interest community law. If any questions arise as to the appropriate use of an executive session, you are welcome to contact my office to discuss.

The Association does need to review the Regulations and confirm that future final decisions comply with the Regulations. In the present case, the Association failed to provide its registration number and the license number of the association manager.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Silcott Meadows HOA