



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

April 13, 2021

Complainant: Richard Tobin
Association: Quaker Hill Community Association
File Number: 2021-01875

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

The Complainant a complaint to the Association dated September 25, 2020 and another dated August 14, 2020. The Association provided a response to the complaint dated February 4, 2021. The Complainant than submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 28, 2021 and received on the same date.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant alleged that the Association has failed to comply with §55.1-1816(B)¹ of the Property Owners' Association Act by failing to provide continual notice of committee meetings. The Complainant acknowledged that he has received notice of board meetings but stated that over the past several years he has "never been informed of any meetings of the board's committees or subcommittees or instances in which someone implements the responsibilities of a committee or subcommittee."

In his second complaint, the Complainant stated that the Association has failed to establish an effective method of communication in compliance with §55.1-1817² of the Property Owners' Association Act. This statute requires an association to establish a reasonable, effective, and free method of communication for owners to communicate among themselves and with the board of directors. The Complainant wrote that he does not consider the bulletin board at the community center to be an effective method of communication among owners.

In response to the allegation that the Association had failed to provide notice of committee meetings, the Association stated that it had already advised the Complainant that it agreed he had the right to have notices of committee meetings and would be providing committee meeting notices to him. The Association noted that no committee meetings have been held since the Complainant's request for notice.

Because determinations are based upon the information provided in the association complaint and the final decision from an association, there is no way for me to determine if any committee or subcommittee meetings have been held and whether the Complainant was not provided notice of such meetings. The information contained in the NFAD was conflicting and not sufficient for me to conclude whether committee meetings have been held without notice. For this reason, I can only conclude that there may have been a failure to provide notice and would ask the Association to ensure that the Complainant is provided the continuing notice for all meetings that he has requested.

¹ B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email 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 email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

² 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 Association did state in its response that because it agreed with the Complainant that he should be provided notice, it did not consider the formal complaint process necessary. This office does not agree with this approach. Once an association complaint has been submitted via the association complaint procedure, the association complaint process is triggered and all aspects of it must be followed. Even if the association wholeheartedly agrees with a complainant's concerns or requests, it must still complete the complaint process, to include consideration of the complaint and a final decision on the complaint.

In response to the second complaint, the Association stated that it disagreed with the Complainant's allegation. The Association said that it provides two methods of communication; members can have information posted on a bulletin board at the clubhouse and owners can have information posted on the Association's website. The Association considers these methods sufficient but is considering other options and will alert owners if it decides to utilize a different method communication.

While bulletin boards are a common method of communication in associations, and an acceptable one, I would note that if the bulletin board is locked, it would seem to limit the ability of owners to communicate effectively with one another, since communication must be dependent upon someone else posting items in a timely manner. This office has also previously noted that multi-page documents cannot be seen in their entirety if posted in a locked bulletin board. Posting on a website is another method often used by associations, but requiring submission of the items to be posted rather than allowing for direct posts may limit the opportunity for owners to truly communicate "among" themselves, as required by the Act. Because the Property Owners Association Act does not define reasonable and effective, two key terms contained in the statute that addresses communication, this office cannot define those terms either. Because of this, I will simply ask the Association to continue, if it has not yet concluded it, its research into optional methods of communication, with a specific effort to find a method that would allow owners to more fully communicate among themselves.

An email was included in the NFAD that stated the association was going to consider the complaint in executive session. I am not sure if that happened, but would remind the Association that it can only meet in executive session if its reason for doing so falls under the permissible reasons for entering executive session. Generally, unless association's counsel is present for consultation, NFADs should be held in open meetings with proper notice to the membership and of course, the complainant.

Required Actions

The Association must make certain it provides continuing notice to the Complainant of any meetings. I ask the Association, as it continues its research into alternative methods of communication, to consider other methods that would more fully provide for communication among the owners.

The Association must also ensure that it includes the registration number and name and license number of the common interest community manager on any future final decisions. This information is required by the Common Interest Community Ombudsman Regulations (18 VAC 48-70-50).

Please keep in mind that a failure to comply with the applicable laws or regulations may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Quaker Hill Community Association