



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

April 28, 2021

Complainant: John Baumgarten
Association: The Villas at River Pointe Condominium Association, Inc.
File Number: 2021-02070

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 submitted a complaint to the Association dated January 17, 2021. The Association provided a response to the complaint dated February 12, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on March 9, 2021.

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 alleges that the Association has failed “to make all proceedings, meetings, and Board announcements to those that do not have the Electronic means to receive such notices or announcement.” The Complainant finds this failure to be a violation of §55.1-1832 of the Property Owners’ Association Act, which is mirrored by §55.1-1935(F)¹ of the Condominium Act, which is the applicable act in this case. The Complainant wrote that the Association is almost exclusively using a website for meeting notice and states that there is a very limited distribution of meeting notices. The Complainant also wrote that the Association has not done anything to determine which owners do not have electronic capabilities or a desire to receive electronic notices.

In its response to the allegations, the Association stated that it had posted notice of all board meetings on bulletin boards in the community and utilizes sign boards throughout the community for the same purpose. The Association believes that these methods meet the requirements of §55.1-1949(B)(2) of the Condominium Act. The Association further stated that it is not required to determine which owners have electronic capabilities and with to receive electronic notice.

The Complainant referenced “all proceedings, meetings, and Board announcements” in his complaint, and not just board meetings. Providing notice of board meetings and any committee or sub-committee meetings via bulletin boards and sign boards, should be sufficient, if those postings are “reasonably calculated to be available to a majority of unit owners” as required under §55.1-1949(B)(2)². However, meetings of the unit owners would also be included in the “all” meetings category and the applicable statute, §55.1-1949(A)³ does require consent by an owner in order to

¹ If any person does not have the capability or desire to conduct business using electronic means, the unit owners' association shall make reasonable accommodation, at its expense, for such person to conduct business with the unit owners' association without use of such electronic means.

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

³ 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice

provide notice of unit owners' meetings via electronic means. Per the statute, notice for unit owners meetings requires at least 21 days' advance notice for an annual or regularly scheduled meeting and at least seven days' advance notice for any other meeting. Notice can be given by mail or hand delivery, or notice can be by electronic means if the condominium instruments or rules and regulations expressly provide for such notice and the owner consents to such electronic notice. I am not sure what proceedings or announcements the Complainant is referencing and cannot, therefore, provide a determination on whether an association can use electronic notice for proceedings. I would note that §55.1-1935(F) applies to situations where a person is conducting business with an association. It does not seem that announcements made by an association would constitute conducting business, but without more information, I cannot determine if the statute is applicable.

As for the Association's obligation to determine if owners have electronic capabilities or wish to receive electronic notices, I do not find anything in the Condominium Act that puts that responsibility on the Association. Instead, there are instances where consent of a unit owner may be required.

Required Actions

If the Association is providing electronic notice of unit owner meetings, it must make certain it has obtained the Complainant's consent for any such notice.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Villas at River Pointe Condominium Association, Inc.

may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may, to the extent that the condominium instruments or the condominium's rules and regulations expressly provide, send notice by electronic means *if consented to by the unit owner to whom the notice is given*, provided that the officer or his agent certifies in writing that notice was sent. *(emphasis added)*