



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

June 3, 2021

Complainant: Stephen Kim
Association: Clark's Corner Homeowners Association, Inc.
File Number: 2021-02514

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 March 20, 2021. The Association provided a response to the complaint dated April 29, 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 May 18, 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 and we cannot provide a determination.

Determination

The Complainant included a cover letter that provided additional information about the complaint that was not included in the original complaint submitted to the Association. As is always the case, this office will not consider such additional information since it was not part of the original complaint and the Association was not provided an opportunity to respond.

The Complainant has alleged that his Association is in violation of §55.1-1807(1)¹, §55.1-1816(A)², and §55.1-1832(F)³ of the Property Owners’ Association Act. Specifically, the Complainant alleges that the Association failed to share the minutes of the March 8, 2021 Annual Meeting with all owners.

The Complainant did not provide specifics as to how the Association violated the statutes he set forth in his complaint. While §55.1-1807(1) does address a member’s right to access the books and records of the association, it does not require an association to distribute minutes to members after a meeting. §55.1-1815, which the Complainant did not reference, is the provision in the Property Owners’ Association Act that specifically addresses the rights of members to access the books and records of an association. Nowhere in that statute is there a requirement that an association distribute minutes to the membership after a meeting.

There is a requirement that the association provide an owner in good standing the right to examine the books and records, if properly requested, and it allows owners to obtain copies of books and records. However, the statute contains no requirement that an association distribute minutes to members after a meeting has taken place. If such a requirement exists, it would only be in the governing documents of an association.

¹ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;

² A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted 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. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

³ F. If any person does not have the capability or desire to conduct business using electronic means, the association shall make reasonable accommodation, at its expense, for such person to conduct business with the association without use of such electronic means.

The Complainant did not provide any information as to why he believes the Association is in violation of §55.1-1832 of the Property Owners' Association Act. This may be a reference to the Association's use of a website to distribute information, but without more background on this particular allegation, I cannot provide a determination. He also did not provide any information as to why he believes the Association is in violation of §55.1-1816(A), therefore no determination can be providing regarding this allegation.

In response to the Complaint, the Association stated that it would provide meeting minutes within 60 days of board meetings or at the next meeting, whichever comes first.

Required Actions

No action is required of the Association. Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners Association, Inc.