



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

July 28, 2021

Complainant: Constantino Panayides
Association: Lafayette Park Condominium
File Number: 2022-00063

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 May 6, 2021. The Association provided a response to the complaint dated June 16, 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 July 12, 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.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that the Association is in violation of §55.1-1950¹ of the Condominium Act. His basis for the violation is that three members of the Association’s board of directors have requested that he not communicate with them via personal email. These requests were from the President, the Treasurer, and a Director. The Complainant believes that the actions of the three board members is denying him his right to utilize the method of communication the association is required to establish for communication with the board and among the owners. The Complainant stated that there was no formal communication policy describing the method of communication with board members and owners have to find a way to communicate with board members.

The Association’s response to the allegations stated that in accordance with the Association’s complaint procedure, owners can submit association complaints via mail or email to the Lafayette Park office email address and owners can send any other complaints to the Management Office and the General Manager will forward them to the board as appropriate. The Association also wrote that the condominium utilizes BuildingLink as a method by which owners can communicate with the board and among themselves regarding association matters. The Association further noted that the board members did not bar the Complainant from communicating with them; they asked that he not send communications to them at their personal email addresses.

It appears that the Association does have a method of communication in place (BuildingLink) that would meet the requirements of §55.1-1950. However, the more pressing issue is whether the Association was in violation of the law when three of its board members asked the Complainant to stop using their personal email addresses for communication. I cannot arrive at a determination on this issue for two reasons.

The first reason is that my office has no jurisdiction over individual members of an executive board. In this instance, the Complainant has alleged that three members of the board of directors violated §55.1-1950 by asking that he stop contacting them using their personal email addresses. The Complainant did not allege that the board as a whole was in violation of §55.1-1950. I cannot provide a determination regarding the actions of individual members of an executive board, I can only provide a determination as it relates to the board in its entirety.

¹ A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.

In addition, under 18 VAC 48-70-10,² an association complaint can only be filed against a governing board, and not against individual members of that board. As such, this complaint is not appropriate for the complaint process and this office cannot provide a determination.

While this complaint is not appropriate for the association complaint process, and we do not have jurisdiction over individual members of a board, even if this had been a matter where the entire board was requesting that an owner not use their private email addresses, I believe they could make such a request, as long as there was a method of communication in place that would allow owners to communicate with the board. In this particular case, the Association has written that it utilizes BuildingLink and that owners can send general complaints to the General Manager. This appears to provide two methods by which owners can communicate with the executive board, which is sufficient to meet the requirements outlined in §55.1-1950.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lafayette Park Condominium

² "Association complaint" means a written complaint filed by a member of the association or a citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.