



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

August 13, 2021

Mary Broz-Vaughan
Director

Complainant: Phillip Coletti
Association: Clark's Corner Homeowners Association
File Number: 2022-00181

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 14, 2021. The Association provided a response to the complaint dated July 6, 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 22, 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 on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

This Determination is final and not subject to further review.

Determination

The Complainant provided several pages of introductory information in the NFAD that were not part of the complaint submitted to the Association. As such, only those portions of the NFAD that were included in the original complaint to the association can be part of this determination.

The Complainant alleges that the Association is in violation of §55.1-1807(4)¹ of the Property Owners’ Association Act. Specifically, he believes that when the Association sent him notice that “the CCHOA Board will hold a complaint hearing to review all complaints in the order we received them” they attempted to create an unauthorized hearing in violation of §55.1-1807. The Complainant stated that “[a] hearing is a right given to homeowners and not a weapon that a board is authorized to impose on owners that submit complaints...”

The Complainant also requested that the Association cite specific language in the governing documents every time it sends notices or requests action by the Complainant, that all board notices lacking reference to governing documents be null and void and that the Secretary should be admonished for claiming borderline harassment. Since none of these additional issues alleges a violation of common interest community law they will not be addressed.

The Association responded to the allegations by acknowledging that using the word “hearing” caused confusion and as noted in an email from this office to the Complainant several months ago, “[m]any associations use the term hearing, and it is an improper use and confusing to complainants.” The Association stated that it will “refrain from using the word hearing but instead will utilize the phrase complaint consideration...”

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

4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § 55.1-1819, and the right of due process in the conduct of that hearing; and

I cannot find a violation of common interest community law based on the use of the word "hearing" to describe the Association's consideration of the Complainant's complaint. The intent of the Association's use of the word was obvious when the Association stated that the "hearing" was "to review all complaints." In addition, the language in §55.1-1807 is not applicable to this situation since it only pertains to a proceeding against a lot owner to enforce any rule or regulation of the association and the subsequent right to be represented by counsel at such a proceeding. It did not appear that the Association was suggesting that it was attempting to enforce a rule or regulation against the Complainant. I would also note that §55.1-1807 simply states certain rights of an association member in good standing. The Complainant did not allege that he was denied a right under this statute; instead, his complaint was that the Association used a word improperly.

This complaint appears to be a matter of semantics and not a violation of common interest community law. The term "hearing" is not defined in the Property Owners' Association Act and outside that act has multiple definitions that could apply to the process of consideration of a complaint, with perhaps the most important definition being "the opportunity to be heard." (Dictionary.com). I agree that using the term consideration is a simpler way of referencing the association's review of an association complaint, since that word echoes the language in the regulations that govern the complaint process. However, I do not find that using the word "hearing" is a violation of common interest community law.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners Association