



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

August 20, 2021

Complainant: Rob Dyson
Association: Lakevale Estate Community Association
File Number: 2022-00196

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 June 15, 2021. The Association provided a response to the complaint dated July 14, 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 August 13, 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 has alleged a violation of §55.1-1816(A)¹ of the Property Owners’ Association Act. It appears that the Complainant believed that the Association held a meeting regarding the collection of votes for an upcoming election but failed to provide notice of the meeting. However, it is unclear from the complaint submitted to the Association when or if this meeting took place. Ultimately, it appears that the complaint is more about the method by which votes were collected which would not be a matter that would fall under our authority. In order to address his concerns, the Complainant has asked that the Association allow a new vote to be taken with a totally transparent ballot process and that the Block Captains (who I believe distribute the ballots) not guide owners in their decision making.

The Association responded to the complaint by stating that it found no basis that any of the conduct complained of was in violation of the open meeting requirements or that the voting process was done improperly. The Association further noted that the work done by the volunteers who organized, solicited and obtained ballots from the homeowners was not a meeting and that no meeting took place. Further, the Association stated the vote was conducted under the oversight of the Board and in accordance with its bylaws.

There was simply not enough information in this NFAD to allow for a determination by this office. There was no evidence that a meeting took place without notice, and it was difficult to determine exactly what had taken place, based on the information provided. For these reasons, no determination can be provided on this matter.

¹ 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.

Required Actions

No action is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Lakevale Estates Community Association