



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

May 9, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Sharon Foster
Association: Cove Condominium Unit Owners Association
File Number: 2023-02577

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 11, 2023. The Association provided a response to the association complaints dated April 11, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 17, 2023 and received April 21, 2023.

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.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant is alleging that the Association improperly provided notice of a board meeting. Specifically, she alleges that she received notice on the same day as the meeting, and that instead, notice should have been given further in advance. The Complainant also believes that the Association sent “delayed” emails and doing so was improper and that anything decided in the meeting should not be binding. The Complainant believes the Association is in violation of its bylaws and charter as well as the Condominium Act (§55.1-1949¹). Additional information was included in a cover

¹ A. 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 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 send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer

letter, but as is always our policy, it cannot be considered since the Association was not also provided a copy and has not been given the opportunity to respond to the additional information.

The Association's response to the Complaint stated that the Association was not in violation of the applicable statute under the Condominium Act, since the requirement for specific advance notice only pertains to unit owner meetings, not board meetings. The Association further noted that when the December board meeting was cancelled due to board member illness, all owners were advised that the notice for the rescheduled meeting would be provided after the holidays and as soon as a meeting could be convened. In addition, the Association wrote that ample notice is always preferable but was simply not possible at the time.

The Association is correct in its interpretation of meeting notice requirements. Unit owner meetings, which may include annual elections, do require specific prior notice, either 21 days or 7 days (§55.1-1949(A)). Notice must be sent by mail or hand delivery. Board meetings, on the other hand, are governed by §55.1-1949(B), which does not have a specific requirement for how far in advance notice of a meeting must be provided. The only obligation is that notice be given and that it be "published where it is reasonable calculated to be available to a majority of the unit owners." Emails to owners notifying them of a board meeting would meet the criteria of this statute for board meeting notice.

Certainly, it is always ideal to provide as much notice as possible, in order to obtain the largest number of attendees, but based on the statute that governs meeting notice, the Association is not in violation and has not provided improper notice. I would note that the condominium instruments may have an impact on the notice requirements for both unit owner meetings and board meetings. If the condominium instruments say anything other than what the Condominium Act provides, this would be a legal issue outside the scope of our authority.

or his agent certifies in writing that notice was sent and, if such electronic mail was returned as undeliverable, notice was subsequently sent by United States mail.

- B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.
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.

Required Actions

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Cove Condominium Unit Owners Association