



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Kishore S. Thota
Director

Brian P. Wolford
Chief Deputy Director

February 23, 2024

**VIA U.S. FIRST CLASS MAIL and
E-MAIL (twcmanage@aol.com)**

Board of Directors
Christopher at Cedar Lake Unit Owners' Association
c/o TWC Association Management
397 Herndon Pkwy., Ste. 100
Fairfax, VA 22033

**Re: Christopher at Cedar Lake Unit Owners' Association
File No. 2024 - 01480**

Please find attached the Ombudsman's determination regarding the NFAD issued in the above-referenced matter. A copy of this determination will be sent to both the Complainant and Association counsel via e-mail.

We appreciate the input and cooperation of both parties. If you have any questions, please contact us.

Respectfully,

A handwritten signature in blue ink, appearing to read "R. Thomas Payne II".

R. Thomas Payne II
Acting Common Interest Community
Ombudsman and Deputy Director,
Compliance & Investigation
Division

cc: Karen O'Malley, Complainant (via e-mail)
Michael C. Gartner, Esq. Association Counsel (via e-mail)



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Kishore S. Thota
Director

Brian P. Wolford
Chief Deputy Director

February 23, 2024

Complainant: Karen O'Malley
Association: Christopher at Cedar Lakes Unit Owners' Association
File Number: 2024-01480

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, Karen O'Malley, submitted a complaint to the Christopher at Cedar Lakes Condominium dated November 13, 2023. The Association provided a response to O'Malley's complaint dated December 19, 2023. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman dated December 29, 2023, and the NFAD was received by our Office on that same date.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board. Further, this Determination is final and not subject to further review pursuant to Va. Code § 54.1-2354.4(C).

Determination

The Complainant presents five allegations against the Association. As described more fully below, the allegations range from issues with the allocation of parking spaces by the Association, providing methods of communication, board communications with owners, to the review of records. This determination will address each separately.

1. Provision of Reasonable, Effective, and Free Method of Communication.

The Complainant contends that the Association violated the Virginia Condominium Act (VCA) by failing to provide a reasonable, effective, and free method of communication. The VCA, at Va. Code § 55.1-1950(A), requires the executive board of a condominium to “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.” Based on the submitted information, the Association consists of six buildings, two of which are on one “campus” and four others on a second “campus.” Each building has an open, unrestricted bulletin board for residents to post materials and communicate with one another. The Association does not require prior approval of any content posted on the bulletin boards. Each building is individually secured for

security purposes, which apparently means that residents of one building cannot enter other buildings, even to post on that building's bulletin board.

This is pertinent because the Complainant alleges that while she can post things in her building, she no longer has a reasonable, effective, and free method to communicate with other Association unit owners. Prior to a recent software platform change by the Association, all residents could also communicate through a portal provided by the Association's software platform. When the Association changed platforms, however, the new platform apparently did not likewise provide such a portal. Thus, the allegation that not all unit owners could communicate effectively and freely. But, in its response, the Association stated that at its December 14, 2023, executive board meeting, the board voted to reinstate the prior software platform to revive the ability of Association unit owners to communicate amongst each other through the previously provided portal.

Given that the revival of the electronic platform, combined with the physical bulletin boards in each Association building, will provide not just one, but two means of providing reasonable, effective, and free communication for unit owners, we cannot find that this configuration of communication methods is in conflict with Va. Code § 55.1-1950(A).

2. Property Management Reports Not Being Performed.

The Complainant alleges that the property management company retained by the Association is not producing monthly property inspections/reports or annual comprehensive management plans due to their absence from agenda packets. The complainant asserts that such omissions are a violation of Va. Code § 55.1-1949(B)(3), which states that, in pertinent part:

"at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board."

The Complainant then cites to regulations, specifically 18 VAC § 48-50-190(7) and (10) regarding a management company's duty to comply with its management agreement with the Association. It appears the basis for this allegation is that the agenda packets do not contain such reports. The Association responded that such reporting is typically done verbally and may be captured in meeting minutes, and to further extent, in budgeting information, contracts, reports, and invoices generated by contractors.

Regardless, though, the statute in question here provides that an executive board must provide agenda packets to unit owners, but it does not specifically state

what documents must be contained in such packets. Further, the Ombudsman is not the forum for adjudicating a unit owner's dissatisfaction with an association's management company. Whether a property management company is complying with the terms of its management agreement is a determination to be best made by the Association through its executive board since that is who contracted with the property management company. Here, the Association stated in its response that is satisfied that the property management company is routinely doing inspections and it "is satisfied with the management fulling [sic] the contractual obligation to regularly inspect the property and to report to the Board as to the condition of the property."

In sum, the Complainant acknowledges she was provided an agenda packet for meetings. The fact that it does not contains reports that she believes should be present, but the Association handles by different means, does not result in a violation of Va. Code § 55.1-1949(B)(3).

3. Access to Association Books and Records.

In her third allegation, the Complainant asserts that the Association has not reliably provided, maintained, and/or made accessible certain books and records to unit owners. If true, such actions would constitute a violation of Va. Code § 55.1-1945(B), which provides in pertinent part, that except for certain exemptions provided by subsection (C): "all books and records kept by or on behalf of the unit owners' association ... shall be available for examination and copying by a unit owner in good standing ... so long as the request is for a proper purpose related to his membership in the unit owners' association ..."

This allegation is based on the Association's apparent failure to produce, in response to her requests, records related to the inspection, testing, and maintenance of the Condominium's fire suppression systems. The Association responded that it produced some of the records responsive to the Complainant's request, which Complainant acknowledged, but that other requested reports were not produced because those reports were either for inspections that were not required of that were not provided to the Association. In sum, the Association stated that "all responsive materials have been provided."

Because there is no information to suggest that the Association is withholding records it is keeping or maintain from the Complainant, we cannot find that the Association has violated its duty to provide the Complainant with access to records it is keeping on behalf of unit owners regarding the operation and administration of the condominium. Further, whether the Association elects to maintain certain records on its portal does not fall under this statutory provision. We do note, however, the Association indicated that it does, in fact, post on the Association website, including the Association's covenants, conditions and restrictions, disclosure packet materials, and meeting minutes (once approved) are posted on the Association's website.

4. Ongoing Bias/Inequitable Decision Making – Parking.

Here, the Complainant alleges that the Association violated three statutory provisions – two in Va. Code § 55.1-1949 (open meetings and owner comment period) and Va. Code § 55.1-1939 (owner's right to vote) – when it addressed a parking space allocation issue. There is no evidence to show that the Association violated any of these statutory provisions. In the exhibits attached to the Complaint, there is a page from the minutes for the December 12, 2019, Association meeting that notes that “[m]uch discussion was held between the Board and the owners in attendance over the parking spaces ...” Prior to this sentence, there is also an explanation as to the issue with the parking spaces. The minutes reflect that the Board was going to consult with counsel before any further decisions were made. At the February 25, 2020, meeting, the Board engaged in further discussions and Policy Resolution 2020-1 was passed to address the issue.

There is no evidence indicating any Board business was conducted in closed session or that unit owners had neither the opportunity to attend the February 25, 2020, meeting nor address the Board. The Association's June 25, 2020, meeting minutes demonstrate that the Association's Board addressed Ms. O'Malley's expressed concerns in an open meeting, and there are further communications between the Complainant and the Board on the parking issue. No where, though, is there any showing that the Association violated either Va. Code § 55.1-1949 or § 55.1-1939.

5. The Board Exceeded its authority over Complainant's Right to Provide Comments or Questions.

In her fifth and final allegation, the Complainant contends that at two Board meetings in 2023, the Board in once instance removed her question from a public chat room and placed it in a private chat room. In the second instance, the Board President provided a curt answer to Complainant's question about the parking shortage for her building. Associations must, in accordance with Va. Code § 55.1-1949(D), allow time for comments from unit owners on any matter relating to the unit owners' association. There is, however, no requirement that an Association must respond to such comments.

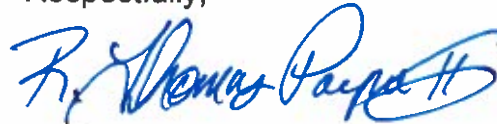
Here, the Complainant stated that she placed a question, as directed, in a Zoom chat during the June 29, 2023, meeting. She claims her question was immediately removed by the Board to a private chat room and was not read publicly. In its response, the Board did not deny this, but both parties acknowledged that the Complainant was later able to raise her question verbally during a public forum period of the meeting.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Respectfully,



R. Thomas Payne II,
Acting CIC Ombudsman/
Deputy Director, Compliance &
Investigation Division