



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

October 3, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Ileane Kenney
Association: The Heatherlea, A Condominium
File Number: 2023-00531

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 an association complaint to the Association dated June 15, 2022. The Association provided a response to the association complaint dated August 3, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 3, 2022 and received August 18, 2022.

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 has alleged that the Association has failed to maintain and establish a method of communication for owners to communicate with the board (not the management company), which is a violation of §55.1-1950¹ of the Condominium Act. She further states that she does not have addresses for the board members. The Complainant asks the Association to comply with the law and establish a way for owners to communicate directly with the board. The Complainant also questions why the association membership list is not available on the association website.

In its final decision, the Association wrote that its bulletin board policy satisfies the requirements found in §55.1-1950. The Association referenced a prior Determination issued by this office in 2017 that was also related to its method of communication. The Association noted that no violation of the statute was found in that Determination and several other Determinations issued by this office have found bulletin boards to be an acceptable method of communication. The Association provided the Complainant the association membership list, which included contact information for the board members, and commented that there is no legal requirement to post it on the website.

It is true that this office did not find the Association in violation of the statute governing methods of communication, but I will note that in the prior situation, the question was more whether the Association had posted documents upon request and whether those documents could be seen in totality by other owners. While the facts are quite different in this situation, and the complaint rests upon an alleged failure to have a direct method of communication with the association's board of directors, rather than whether the bulletin board is sufficient for posting a particular type of document, I still do not find the association to be in violation of the law.

The Association has a bulletin board policy in place to provide for unit owner communication with the board and among owners. This office cannot determine the more subtle merits of a particular method of communication, nor can it decide if a

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.

particular method is effective or appropriate. Instead, it can only determine if a method of communication is provided and if it meets the statutory requirements. In this case, those requirements appear to be met. As the Association wrote in its response, there is no requirement that membership lists be posted on a website.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in black ink, reading "Heather Gillespie". The signature is written in a cursive style with a large initial 'H' and 'G'.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Heatherlea, A Condominium