



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: Sheila Walsh  
Association: Briary Farms Townhomes Owners Association  
File Number: 2023-00623

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*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.*

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### Complaint

The Complainant submitted three association complaints to the Association, two were dated May 5, 2022 and one was dated June 17, 2022, . The Association provided a response to the association complaints dated August 24, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 29, 2022 and received September 1, 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 filed three complaints via her association’s complaint procedure. The first complaint alleged that the Association has failed to provide 14 days’ notice of regular meetings and annual meetings. The Complainant also alleged that the Association failed to provide proper notice of pesticide application and altered common area by using unlicensed individuals to remove trees. No specific statutes were referenced.

In response, the Association wrote that there was no requirement under applicable Virginia laws for a 14-day notice for regular meetings. Instead, the Property Owners’ Association Act requires that notice be published where it is reasonably calculated to be available to a majority of lot owners. The Association further stated that the Property Owners’ Association Act does require 14 days’ notice for annual meetings and that this requirement was met when the Association sent out notice on May 24, 2022 for the June 15, 2022 Annual Meeting.

The Association did not believe the Complainant established evidence of pesticide application in common areas, but did note that herbicides have been applied and the Property Owners’ Association Act does not contain a requirement of notice of herbicide application. The Association did not consider the complaint regarding unlicensed individuals since it did not allege a violation of common interest community law or regulation.

In her second complaint, the Complainant alleged that the Association conducted an unlawful election when it failed to instruct the membership that they were participating in an electronic election. The Complainant further alleged that the Association did not provide voting guidelines to the members.

The Association responded to this complaint by stating that the Association had not distributed guidelines for electronic meetings, but the membership did receive notice

of the meeting that included the time, date and web link, as well as electronic election procedures. The Association noted that the Complainant was able to cast her own vote without difficulty.

The third complaint was related to access to books and records of the Association. The request was dated May 5, 2022. The Complainant had requested to see all expenditures since April and all money spent by the Board from April 2021 to May 2022. While she did not utilize the association complaint form when submitting this complaint, the Association addressed this issue as a formally submitted complaint.

The Association's final decision on this complaint found that the Board has previously granted the Complainant access to the requested records to the extent that they existed at the time of the request. The Association agreed at its consideration of the complaint to provide access to any of the requested records that were not available on the date of the Complainant's request.

The Complainant included additional information in the form of a cover letter or summary of her complaints, but it was not part of the original complaint submitted to the Association and therefore will not be utilized as part of this determination since the Association was not given the opportunity to respond. These complaints did not include any evidence or supporting documentation, which makes it difficult for this office to fully understand the context of the complaints and the circumstances that led up to them.

I agree with the Association that the Property Owners' Association Act does not require fourteen days' notice for regular meetings of the board of directors. However, it is not clear to me that the Complainant was referencing board meetings in her complaint when she wrote "regular meetings and annual meeting". §55.1-1815(G)<sup>1</sup> of the Property Owners' Association Act lays out the notice requirements for member meetings ("14 days in advance of any annual or regularly scheduled meeting"), but not board meetings. §55.1-1816(B)<sup>2</sup> sets forth the notice requirements for board meetings. This office cannot provide a determination on this matter since it is not clear from the complaint whether the Complainant is referencing member meetings or board meetings. Owners frequently confuse the requirements under these two statutes and believe that the language in §55.1-1815 applies to board meetings and annual meetings. Such is not the case. §55.1-1816 is specific to board meetings, while §55.1-1815 addresses annual meetings and any other member (not board) meeting. The Association did state that it had met the 14-day requirement for notice of the annual meeting held in June.

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<sup>1</sup> G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting.

<sup>2</sup> B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

The Property Owners' Association Act does require notice of the application of pesticides under §55.1-1818.<sup>3</sup> The Complainant provided no evidence that any pesticide had been applied, other than two pictures of a person with a backpack sprayer but no information as to the time, date, or location of the spraying or the nature of what was in the backpack sprayer. The Association did acknowledge that herbicides have been applied, but noted in its response that the statute does not address the application of herbicides. Due to a lack of evidence from the Complainant and the Association's contention that it has not applied pesticides without notice but has applied herbicides which do not require notice under the statute, I do not find the Association to be in violation of the applicable statute. The Property Owners' Association Act does not address any type of unlicensed individual so no determination can be provided regarding the allegation related to an unlicensed individual removing trees.

The Property Owners' Association Act contains provisions that address the use of electronic methods for conducting the business of an association and for voting and holding meetings electronically. Under this statute (55.1-1832<sup>4</sup>), an association is required to adopt guidelines for holding electronic meetings but the statute does not

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<sup>3</sup> The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

<sup>4</sup> A. Unless expressly prohibited by the declaration, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means.

B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the board of directors.

F. Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the association shall make available a reasonable alternative, at its expense, for such person to conduct business with the association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

require guidelines for electronic voting. Instead, the statute requires documentation of electronic votes and identity protection of voters. Because there is no requirement under the law for providing electronic voting guidelines to voters, I do not find the Association in violation of the law.

There does not appear to be an adverse decision related to the request for documents. The Association stated that it responded to the request previously, and agreed to further supplement the records per a more recent request. The Complainant simply needs to set up a time and date to examine the documents.

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, appearing to read "Heather Gillespie". The signature is fluid and cursive, with a large initial 'H' and 'G'.

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Briary Farms Townhomes Owners Association