



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

February 15, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Emmaruth Bowles
Association: Bull Run Swim & Racquet Club, Inc.
File Number: 2023-01569

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 October 3, 2022. The Association provided a response to the association complaints dated November 23, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 6, 2022 and received December 12, 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, in violation of §55.1-1815(G)¹ of the Property Owners' Association Act, did not have an annual meeting in 2022. She stated that the board of directors voted unanimously at its April 10, 2022 meeting to postpone the meeting until May 2023. The Complainant wrote that the annual meeting was moved to May 2023 despite the fact that, to her recollection over the seventeen years she has lived in the community, the annual meeting has always been held in October.

The Complainant references the Bylaws of the association and states that they require that each annual meeting after the first annual meeting be held on the same day of the same month each year. The Complainant believes the Association should have had an annual meeting in 2022 and then revisit the timing of the annual meeting for 2023.

The Association responded to the allegations by referencing the Bylaws and language in the Bylaws that states: "The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Club, and each subsequent regular annual meeting of the Members shall be held on the same of the same month of each year thereafter..." The Association noted that the Property Owners' Association Act, pursuant to §55.1-1815(G) requires an association to hold annual meetings "in accordance with the provisions of the bylaws." The Association stated that it is changing

¹ 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. In the event of cancellation of any annual meeting of the 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.

the date of the annual meeting to May 22, 2023, to come into compliance with the language of the Bylaws.

As was stated in the "Authority" section of this Determination, this office has no authority to interpret the governing documents of an association. Instead, it can only address whether there has been a violation of common interest community law, which in this case is the Property Owners' Association Act.

The statute that addresses association meetings (association meetings include annual meetings but not board meetings), does not specifically set out requirements for annual meetings. Instead, it requires that "meetings of the association" be held "at least once each year" in accordance with bylaw provisions. There was nothing in the complaint to the association that addressed whether there had been any other association meetings over the past 12 months, only that the annual meeting had last occurred in October of 2021. It is possible the association had association meetings other than the annual meeting, and if so, such a meeting or meetings would have satisfied the requirement under the statute.

Ultimately, the issue is whether the association must hold its annual meeting in May, as argued by the Association or in October, as argued by the Complainant. If there was no other member meeting held in the 12 months prior to the complainant's submission of her complaint, such lack of a member meeting would be a violation of the statute. However, in this situation, we must also consider the bylaws since the statute specifically requires that we do so. It is there that this matter becomes a legal issue outside the scope of this office. Since we cannot interpret or apply the governing documents of an association, this office cannot make a determination as to whether the association must hold its annual meeting in October, thus satisfying the "at least once each year provision of the statute, or instead, should wait until May 2023 to, in its opinion, satisfy the requirement set forth in the bylaws.

Arguably, the Association could simply hold "a" meeting of the association and satisfy the statutory requirement, even if that meeting is not the annual meeting. However, I do not believe this would resolve the Complainant's concerns, and since we do not know if there were any association meetings held in the past year, this office cannot determine if there actually was a violation of the statute in regard to holding any association meeting over the past 12 months.

Required Actions

No action is required of the Association as it pertains to allegations contained in the complaint.

However, the Association failed to provide certain required information in its final decision. The Common Interest Community Ombudsman Regulations require an association to include several key items in a final decision:

1. The right of a complainant to submit a Notice of Final Adverse Decision to this office and the applicable contact information for this office. (18 VAC 48-70-50 (10))
2. The Common Interest Community Board Registration number of the association and if applicable, the name and license number of the common interest community manager. (18 VAC 48-70-50 (9))

The Association must ensure that future final decisions contain all the information required under the Regulations.

Please contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bull Run Swim & Racquet Club, Inc.