



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

July 26, 2023

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Lynn Cisar
Association: Great Creek Landing Property Owners Association
File Number: 2024-00070

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 March 30, 2023. The Association provided a response to the association complaint dated June 27, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received July 7, 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.

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 §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant has alleged a violation of §55.1-1817¹ of the Property Owners’ Association Act. The Complainant stated that the Association is in violation of the statute because it disapproves pending Facebook posts by members, thereby blocking them from using the method of communication. The Complainant further alleged that the Association turns off lot owner comments on Facebook regarding association matters and blocks or removes a member in certain situations.

According to the Complainant, members must obtain approval before their posts can be published. The Association disapproved two posts that she submitted for posting on the website. The Complainant alleged that the Association suppresses topics that displease it and restricts commenting from members. She does not believe that her attempted posts were in violation of the rules that govern the use of the method of communication.

¹ The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

The Association's response denied a violation of the statute and referenced the rules it had adopted regarding the Facebook page used by the Association for its method of communication. The Association did not address the first post that the Complainant referenced in her complaint, but it did address the second post and wrote that it believed the intent of the post was to circumvent the rule that does not allow members to ask questions of the board via its Facebook page. The Association further noted that questions for the board should be submitted directly to the board. The Association provided an excerpt from its Facebook rules that specifically stated, "No Board questions!!!"

This is a difficult issue to address since much of it does not fall under our authority. Association rules and regulations are part of the governing documents of an association and therefore do not fall under our purview, which means we cannot interpret them or enforce them. There is also nothing in the applicable statute that outlines the extent to which an association's rules can impact a member's right to communicate with the association or other owners. In the present case, it appears that the primary issue is whether the association can apply its Facebook rules in the present scenario and whether by doing so it is denying an association member the right to communicate.

There is nothing in the statute that prohibits an association from creating rules or regulations that govern its method of communication, as long as those rules or regulations do not deny an owner the right to communicate with the board of directors and among other owners. In the present case, it is not clear if the Complainant was ever provided a reason for having her posts blocked. Without a reason and an opportunity to amend her post, it does appear that she was denied her right to communicate among other owners. I am also not convinced that the board can prohibit owners from asking questions. The board may be able to notify owners that questions will only be answered if they are posed through a specific method or portal, but I do not believe the board can prohibit owners from asking questions at all.

The statute does not provide any specificity as to the types of communication it contemplates. As such, we must assume that virtually any communication would be acceptable. To what extent an association can deny communication is a legal question outside the scope of our authority since the answer does not lie in common interest community law.

Required Actions

The Association needs to reconsider its rules governing its Facebook page and ensure that it is not denying owners the right to utilize this method of communication. It must also ensure that it has a lawful right to prohibit a post if it makes a decision to do so. The Association may wish to consult with an attorney to discuss its communication policy.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Great Creek Landing Property Owners' Association, Inc.