



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 3, 2023

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: John Koch
Association: Poplar Tree Homeowners Association
File Number: 2024-00096

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 February 22, 2023. The Association provided a response to the association complaint dated June 20, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received June 14, 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 that the Association has failed to provide a single platform for owners to communicate among themselves and with the Board of Directors and is thus in violation of §55.1-1817¹ of the Property Owners' Association Act. The Complainant wrote that the Association ceased monitoring its Facebook page and online discussion forum, resulting in a termination of communication with the board. The Complainant suggests that the Board commit itself to interactively and effectively engage in the existing online discussion forum.

The Association responded to the Complaint by stating that it provides a method of communication for owners to communicate with the board of directors, which is via an association email address. When sent, the email address reaches each board member simultaneously.

I do not find that the Association is in violation of the Property Owners' Association Act by having a method of communication for owners to communicate among themselves and a separate method for owners to communicate with the board of directors. In looking at the statute in its totality, we must consider not just the requirement for a method of communication, but also that the method be reasonable, effective, and free.

I am hard pressed to imagine a single method of communication that could be reasonable, effective, and free for owners to communicate among themselves *and* for

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.

owners to communicate with the board. Instead, I believe a method for communication among owners and a separate method for owners to communicate with the board would be acceptable and more logical, since the ultimate goal is to create communication opportunities in the community.

In the present case, where there are 713 lots, and the association is presently using a website for communication among owners, if we chose the one method of communication interpretation, the board of directors would be required to monitor every chat or conversation to determine if an owner is seeking to communicate with the board and not one of the 713 lots. This seems neither effective nor reasonable. I believe there is ambiguity in this statute, and I believe that it can be interpreted both as the Complainant has interpreted it, meaning that only one method of communication is required, and as this office has interpreted it, that this statute supports one method of communication among owners and one method of communication with the board. Once we consider the context and intent of this statute, I believe that two methods of communication is the more appropriate interpretation.

As a side note, this office cannot define reasonable or effective since these terms are not defined in the Act, but it can refer to generally accepted definitions such as those provided by Black's Law Dictionary and Merriam Webster. Black's Law Dictionary defines reasonable as "fair, proper, or moderate under the circumstances," or "[a]ccording to reason." Black's does not define effective, but Merriam Webster defines effective as "producing a decided, decisive, or desired effect."

While this decision is final and not subject to further review by this agency, per the regulations and statutes that govern it, it is not legally binding. This means either party has the right to seek legal counsel or take legal action if they disagree with the determination.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Poplar Tree Homeowners Association

Sequoia Management Company