



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

October 11, 2023

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Jeffery Bowles
Association: Bull Run Swim and Racquet Club, Inc.
File Number: 2024-00717

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 April 9, 2023. The Association provided a response to the association complaint dated August 23, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 16, 2023 and received September 22, 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.

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.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that the Association is not providing a reasonable alternative for holding its annual member meeting electronically. The Complainant references his Association’s guidelines for providing notice and conducting meetings electronically, but we cannot address any references to that document since we have no jurisdiction over the governing documents of an association. The Complainant did, however, also reference §55.1-1832(G) of the Property Owners' Association Act, which does fall under our authority.

The Complainant said that he made a written request to the Association notifying it that he wished to attend meetings in person. He also wrote that he believed the association should accommodate those who wanted to participate in person and those who want to participate electronically. The association did not implement his requested change. The Complainant noted that members have asked for a hybrid meeting, have expressed concern about audio issues, not being let into the meeting, and being disconnected from the meeting before it has been adjourned.

The Complainant asked why his request was not being honored and was told by the Association that it preferred to meet virtually as expressly authorized by Virginia law and its own policies. The Complainant believes failing to provide an alternative in person meeting option is a violation of §55.1-1832(G).

The Association wrote that §55.1-1832 allows, among other things, “any meeting of the Association or the Board of Directors to be held entirely by electronic means, provide that the Board has adopted guidelines for the use of electronic means for such meeting and provided that such guidelines 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 Association further noted that §13.1-844.2 of the Virginia Nonstock Corporation Act allows for meetings by means of remote communication, but because this office does not have authority over that act, we cannot take it into consideration. The Association stated that it had adopted resolutions for guidance as required by the Property Owners’ Association Act and included that resolution with its response to the Complainant.

The Property Owners’ Association Act was updated only a few years ago to provide language that allows association meetings to be held entirely or partially by electronic means. §55.1-1832(F) states: “[a]ny 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.” The Association has adopted guidelines and included them with its response to the Complainant.

Paragraph G of §55.1-1832, does state that “[i]f 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.” (emphasis added) The Complainant believes this paragraph requires the Association to provide options for those who do not wish to meet electronically. I do not believe that is the case.

If we were to conclude that attending a meeting constituted “conducting business” with the association, which is the pivotal requirement under Paragraph G, that paragraph would directly contradict Paragraph F, which very clearly allows the board of directors to determine whether meetings will be held entirely or partially by electronic means. It has always been the position of this office that attending a meeting is not the same as conducting business with an association. But because the phrase “conduct business” is not defined under the law, we cannot take a position as to precisely what constitutes conducting business. However, we do have the provision under Paragraph F that clearly permits an association to meet entirely or partially by electronic means. The plain language of the statute is sufficient for this office to determine that the Association is within its right to determine whether meetings shall be held entirely or partially by electronic means.

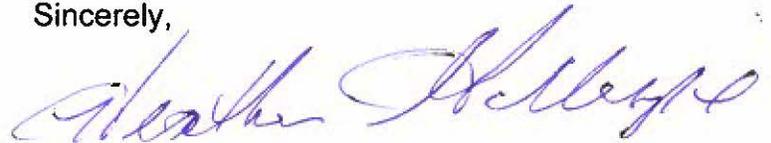
Required Actions

No action is required of the Association regarding the determination and meetings. However, the Association does need to ensure that in the future it fully

complies with the Common Interest Community Ombudsman Regulations, specifically 18 VAC 48-70-50 (9) and (10).¹

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

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

Steven Botello, President

¹ 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.