

February 2016

Community Associations Newsletter

Communication Within Your Association

By: Ursula Koenig Burgess, Esquire

One of the biggest complaints that we hear from unhappy residents is a lack of communication. While the complaint is most often aimed at the board and a belief that the board is not providing information, we also hear complaints that there is no appropriate method of communication established for the owners to communicate with each other.

In 2001, the Virginia General Assembly added sections to the Virginia Property Owners Association Act and the Virginia Condominium Act which require an association's governing body to "establish a reasonable, effective, and free method, appropriate to the size and nature of the [association]" for owners to communicate among themselves and with the board of directors regarding any matter concerning the association. Being a very subjective statute, we have received many questions from our clients as to what communication methods would comply with these provisions. Over the past couple of years, the Common Interest Community Ombudsman ("Ombudsman") has received and issued Determinations on complaints

from residents and owners alleging that associations have failed to provide methods of communication in compliance with the law. Fortunately, these opinions are instructive for associations.

In *Ronald Fiske v. Fox Point Homeowners' Association* (File No.: 2015-02139), the complainant alleged that the Association did not have an appropriate method for communication in place. He asserted that owners did not "have time to review information in the association office, that posting information on bulletin boards [was] not effective, [and] that the one-way communication available on the website [was] only suitable for communicating with the board and management" as opposed to owners. He also complained that the board was unwilling to research other means of communication. The Association responded to the complaint with the 2014 Member Communication Policy resolution which set forth the communications protocol with the Board and among the members, which included, among other methods of communication, the posting of messages to a physical public bulletin board. The board

did have guidelines regarding the content of those communications and had the right to refuse to post something. The Ombudsman reviewed the Member Communication resolution and found that the communication methods were appropriate and in compliance with the statute. The Ombudsman stated that the Association did not have to “use the newest technology available” to establish the communication method.

In the Determination in *Christina Kielich v. The Overlook Foundation* (File No. 2015-03791), the Ombudsman found that the Foundation was in compliance with the statute by having an open forum on a website for owners while prohibiting the complainant from posting on the Foundation’s Facebook page.

Taken together, these Determinations are helpful for associations in designating the method of communication required by Virginia law. While associations do not have to use the latest technology out there, it is clear that this is not a one size fits all situation and boards need to find a method of communication that is effective for the association. This means that the board should undertake a meaningful inquiry and assessment of the association and what might work for the community. The board

may want to send out a poll to the owners asking for input on communication methods.

Once the board determines the method of communication for the owners, the board may also want to consider adopting a communications policy resolution that dictates how residents and owners can communicate with the Board. For example, if a resident reports a maintenance issue to the on-site staff, how long should the resident wait before sending a follow up email to management regarding the status of the maintenance request? Likewise, if a resident sends a letter to the board with a complaint, will the resident get a response from the board? A communications policy resolution will set expectations for the board, management and the residents of the community and will give everyone guidelines to follow. By setting these expectations, we think that the board will enhance the communication within the association, but will also ease the day to day complaints regarding a lack of communication.

If you are interested in adopting a communications policy resolution, contact your Rees Broome, PC attorney – we would be happy to assist you with that.