



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

June 4, 2018

Ralph S. Northam  
Governor

Esther Lee  
Secretary of  
Commerce and Trade

Complainant: Kelly Fowler  
Association: Hillcrest Farms Homeowners' Association  
File Number: 2018-02878

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*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.*

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## Complaint

The Complainant submitted a complaint to the Association, dated March 16, 2018. The Association provided a response to the Complainant April 27, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 8, 2018 and received the same day.

## Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant alleged that she was permitted to review but not permitted to make or receive copies of documents that she had requested under §55-510 of the Property Owners' Association Act. This happened after the Complainant had made an appointment to review the documents and had been given the cost schedule for copies. The copies the Complainant was requesting pertained to an election that was held in October 2017.

In its response to the Complaint, the Association stated that it had "determined that your request was for an *improper* purpose, therefore, your request for copying was denied." The Association explained that it was protecting the privacy of homeowners and that based on the Complainant's prior postings on social media, the Association was concerned that the purpose for requesting copies was to post the documents on social media.

The Property Owners' Association Act, specifically §55-510 B<sup>1</sup>, permits access to all records of the association. This statute does allow an association to deny access to certain documents and does require that a member requesting copies of book and records or the opportunity to inspect them provide a proper purpose related to his membership in the association. The term "proper purpose" is not defined in the Property Owners' Association Act. In the present situation, it appears that the Association is jumping the gun and assuming that the documents the Complainant asked to copy will be used for what it considers an improper purpose, when it appears that no purpose for the request was provided. Based on the documents included with the Notice of Final Adverse Decision and additional documents obtained from the Association, no purpose for the request to inspect and copy the books and records could be found.

The denial of copies because the Association believes the Complainant will use them in a manner that would not meet the Association's definition of a proper purpose cannot be upheld. While I understand the Association's perspective on this, it does not appear that a purpose of any type was provided (and the Association could have denied access for that reason). And while the Association did provide the opportunity to inspect and copy certain books and records, it denied the Complainant the right to copy others based on its belief that the Complaint would misuse the copies and post them on social media, rather than because the Complainant had provided an improper purpose or a purpose not related to her membership in the association.

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<sup>1</sup> B. Subject to the provisions of subsection C and *so long as the request is for a proper purpose related to his membership in the association*, all books and records kept by or on behalf of the association, shall be available for examination and copying by a member in good standing or his authorized agent including but not limited to:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, *which notice reasonably identifies the purpose for the request* and the specific books and records of the association requested. (italics added)

## Required Actions

The Association may deny inspection or copying of any documents that fall under the exclusions set forth in the §55-510 of the Property Owners' Association Act. However, it cannot deny inspection or copying if it is doing so because it believes the requestor may use the documents for a purpose that does not comport with the Association's definition of a proper purpose when no purpose has been provided. If the requested documents do not fall under one of the exclusions contained in §55-510, the Association must allow the Complainant to copy those documents or it may require that the Complainant provide a proper purpose related to her membership in the association before permitting copies to be made.

I would note that the Association also needs to ensure that it provides acknowledgement of receipt of future complaints in a timely manner, specifically within seven days of receipt. The final determination from the Association must also fully comply with 18 VAC 48-70-50 and provide the registration number of the association, the manager's name and license number and the Complainant's right to file a Notice of Final Adverse Decision with this office.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Hillcrest Farms Homeowners' Association