



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 22, 2016

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Dorothy Simmons
Association: Green Run Homes Association
File Number: 2017-01239

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

Complainant submitted a Complaint to the Association dated September 20, 2016. The Association provided a final determination to the Complainant dated October 18, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 15, 2016 and received November 17, 2016.

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 filed two Complaints with the Association. In her first Complaint, the Complainant alleged that the Association's "form for the procedure for DPOR complaints is outdated" and violated §55-510(2)¹ of the Property Owners' Association Act by failing to notify her of receipt of her Complaint within five days. The Complainant believes that the Association is managed by a common interest community manager and therefore obligated to provide notice of receipt within five days.

In her second Complaint, the Complainant appears to be alleging a violation of §55-513(A)² of the Property Owners' Association Act and believes that there is no language in the declaration that provides the board of directors with the power to "charge for due process cases."

The Association responded to the first Complaint by stating that it believes the Complainant may be confused about the applicable provisions of the law. It further states that §55-510 of the Property Owners' Association Act is related to records and their availability for inspection. The Association also addressed the Complainant's allegation that she had not received requested records in a timely manner by explaining the five day time frame for response was for associations managed by a common interest community manager, whereas the ten day response time was for associations that were self-managed which is the case here.

As to the second Complaint, the Association was "not sure what your point is regarding 55-513 but we have sought legal counsel regarding the ability to enforce the governing documents and assess charges..." The Association believes it is acting in accordance with the law.

I agree with the Association that the Complainant may have confused the time frame for providing access to books and records under §55-510 of the Property Owners' Association Act with the time frame for acknowledging receipt of a complaint submitted through the association complaint process. These are two very different time frames that serve two different purposes. §55-510 is related only to the books and records of an association and the right of a member to examine those books and records. It is not applicable to the Complaint submitted by the Complainant. 18 VAC 48-70-50 outlines the time frame required for acknowledgement of receipt of a complaint submitted through an association complaint procedure. This statute states "[t]he association shall provide

¹ 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.

² Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members.

written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt.”

The subject of the second Complaint is specifically related to the declaration of the Association and not a specific action that was in violation of common interest community law. As such, this office cannot provide a Determination as we cannot review and interpret association documents, which would be required in order to determine if the board of directors has been granted the power under the declaration to “make charges for due process.”

The Complainant also referenced a request for records as part of her first Complaint, but no further information was provided, other than dates the request was submitted and dates the records were received. It was not clear if this was intended to be part of the original Complaint to the Association, but without any evidence of the records request, i.e. a copy of the written request to the association, there is no way to review the matter or provide a Determination.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Green Run Homes Association