



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Todd Haymore
Secretary of
Commerce and Trade

January 12, 2017

Jay W. DeBoer
Director

Complainant: Rob Ewell
Association: Green Run Homes Association
File Number: 2017-01524

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 his complaint to the Association dated October 25, 2016. The Association provided its response to the Complainant dated November 28, 2016. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 13, 2016 and received December 20, 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 has alleged that the fees the Association is collecting for disclosure packets is improper and a violation of the Property Owners' Association Act, specifically §55-509.7¹. The Complainant states in his Complaint that the Association is charging \$245.95 for the disclosure packet, when it should be charging only \$100.00.

The Association responded by stating that the issue is a valid concern, and that legal counsel has confirmed that the association is charging the proper amount for disclosure packets. Ultimately, the Association noted that the difference between charging a \$100 fee versus the greater fee permitted under §55-509.6² is dependent upon whether an association is "professionally managed" or "not professionally managed." The Association provided the definition from the Property Owners' Association Act (§55-509³) for "professionally managed" and noted that they fall under this definition "for purposes of resale disclosure packets and the fees charged." The Association is managed by an employee of the association and not a licensed common interest community manager.

The Association is correct in its understanding of the applicable law and in its belief that the differentiation between a "self-managed" association, a "professionally managed association" and a "not professionally managed" association can be confusing. For the purpose of disclosure packets, an association is professionally managed if it meets the definition of "professionally managed" under the Property Owners' Association Act (§55-509). The Association appears to be charging an appropriate fee for disclosure packets, since it does have "a person as an employee for compensation to provide management services to the community" thus meeting the definition of "professionally managed" as it pertains to disclosure packets. The Association also appears to be meeting the allowable fees listed under §55-509.6, which governs professionally managed associations and disclosure packets. To illustrate the permitted fees for disclosure packets in a professionally managed association, I have included a copy of the "Maximum Allowable Fees" document created by the Common Interest Community Board.

Required Actions

No action is required of the Association.

¹ An association that is **not professionally managed** may charge a fee for the preparation and issuance of the association disclosure packet required by § 55-509.5. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in preparing the association disclosure packet. (emphasis added)

² A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section.

³ "Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Green Run Homes Association

MAXIMUM ALLOWABLE FEES

POA Disclosure Packets & Condominium Association Resale Certificates

Virginia law caps the amount owners can be charged for information they must provide to potential purchasers about the home, common areas, and community association.

The **Property Owners' Association Act** calls the legally required information a **disclosure packet**, whereas the **Condominium Act** refers to similar content as a **resale certificate**. Because pulling together the materials involves time, effort, and resources, the law allows the preparer to assess **reasonable charges**, but sets a maximum amount for such fees.

***NOTE:** For Property Owners' Associations (POAs), the law distinguishes between communities that are professionally managed and those run by volunteer member-owners. *(The law does not make a similar distinction based on how condominiums are managed.)*

Non-professionally managed POAs are **not** subject to the CPI-adjusted fees, but rather are governed by § 55-509.7, which currently caps the fee for initial preparation of the disclosure packet at **\$100**, and limits charges for financial updates or inspections at **\$50**.

To account for inflation, the law automatically adjusts the maximum fees applicable to condominiums and professionally-managed POAs* every five years, based on the U.S. Average Consumer Price Index (CPI). The General Assembly established the initial cap amounts in 2008 (displayed as stricken through), and directed the Common Interest Community Board to calculate the **first five-year adjustment (displayed in bold)**, effective January 1, 2013. The next mandatory CPI adjustment will occur in 2018.

Preparers of CONDOMINIUM RESALE CERTIFICATES or DISCLOSURE PACKETS FOR PROFESSIONALLY-MANAGED POAs* are allowed to **charge no more than the following maximum fees** for *only* the following tasks:

- **\$109.31** ~~\$100~~ for **inspection** of the lot/unit *as necessary and authorized to prepare* the packet/certificate
- **\$163.97** ~~\$150~~ for **preparation and delivery** of the packet/certificate in **paper form** OR **\$136.64 total** ~~\$125~~ in **electronic form**
- **\$54.66** ~~\$50~~ for an additional fee to **expedite** the inspection, preparation, and delivery of the packet/certificate—but only if the preparer agrees to do so (*optional at request of seller/agent*)
- **\$27.33** ~~\$25~~ for an **additional copy** of the packet/certificate (*optional at request of seller/agent*)
- **Actual cost** for third-party commercial delivery service to **hand-deliver or overnight** the packet/certificate (*optional at request of seller/agent*)
- **\$54.66** ~~\$50~~ **post-closing fee** charged to the purchaser (*collected at settlement*) to update ownership records of the association
- **\$54.66** ~~\$50~~ for pre-settlement **updates** to the packet/certificate (*collected at settlement*)
- **\$109.31** ~~\$100~~ for **additional inspection** of the lot/unit *if authorized by the association declaration* (*optional at request of purchaser/agent*)