



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

December 14, 2018

Brian Ball
Secretary of
Commerce and Trade

Complainant: Gregory Edwards
Association: Stone Ridge Association, Inc.
File Number: 2019-01347

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 September 27, 2018. The Association provided a response to the Complainant dated October 17, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 9, 2018 and received November 13, 2018.

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 submitted a Complaint to the Association alleging that the Association was in violation of §55-509.3¹ of the Property Owners' Association Act. According to the Complainant, he had purchased his home and weatherproofed its deck and fence without submitting a modification application to his association. Upon notice by the Association that the application was not on file, the Complainant said that he submitted the application, which required a fee, and received approval. Complainant does not believe it is appropriate for the Association to charge a \$50.00 application fee and now asks that the Association refund the fee. The Complainant stated that the fee is not sanctioned by the governing documents of the Association, and that the fee was charged prior to an owner being given due process. The Complainant references the Declaration of Covenants and notes that they contain no provision for a "punitive application fee." He also notes that §55-509.3 "prohibits imposing charges to homeowners unless the charge is for services provided or is related to the use of common areas."

The Association provided a final decision that stated, "the Board took action and voted unanimously to deny your request for a refund of the \$50.00 application fee." The Association further elaborated on its decision by providing a reference to the governing documents that supported the application fee, and by also providing a reference to §55-509.3 of the Property Owners' Association Act. Specifically, the Association wrote that §55-509.3 "permits the imposition of charges expressly authorized by the declaration."

This matter is directly related to the contents of the Association's declaration and other governing documents. As was noted in the introductory paragraphs of this Determination, this office has no jurisdiction over possible violations of the governing documents. In the present case, based on the information provided, determining if the Association has violated §55-509.3 of the Property Owners' Association Act would require a review of the declaration in order to determine if there is language in that document that permits the Association to charge an application fee. Because this office cannot carry out such a review, no determination of this matter can be provided.

Required Actions

No action is required of the Association.

¹ Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association may (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55-509.6 or 55-509.7. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Stone Ridge Association, Inc.