



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

February 22, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Delores Whitley
Association: Peachtree Community Association
File Number: 2019-01979

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 December 16, 2018. The Association provided a response to the Complainant dated January 11, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 22, 2019 and received January 26, 2019.

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 Association failed to provide copies of requested books and records. The Complainant submitted a written request via certified mail, stating that she did not intend to use the records for pecuniary gains and that they records were for her personal records and evaluation of the Peachtree Community Association. A list of the specific documents requested was also included in the written request to the Association. The Complainant also wrote that the Association violated the timing provisions of the law by failing to provide the records within ten days.

The Association's final decision on the Complaint stated that the Board of Directors approved the Complainant's receipt of certain records, and stated that "you, not a duly authorized representative of your choosing, must come to the Peachtree Office to collect said documentation and remit payment..." A list of the documents that would be provided upon payment was included in the final decision.

The statute that governs access to books and records in a property owners' association is §55-510¹ of the Property Owners' Association Act. Under that statute, all books and records of an association, other than those that may be excluded in accordance with the statute, must be available for examination or copying.

Based on the list of documents the Association stated it would provide to the Complainant upon payment of the fees set out in the cost schedule, it appears that the Association does not intend to provide all the records that were requested by the Complainant. No explanation was provided as to why all the documents requested would not be provided. Unless the Association has a valid reason for excluding any of the requested documents (meaning that an exclusion is available under the statute), it must provide the remaining documents to the Complainant once the required payment has been made.

The Complainant's belief that copies of books and records must be provided within ten days is misplaced. While a member does have the right, under §55-510(B)², to exercise her right of examination of the books and records on ten days' written notice if the association is self-managed, the ten-day time frame does not address a request for copies of books and records. Therefore there is no specific time frame set forth in the Property Owners' Association Act for receiving copies of association records, only for the right of examination of the association documents. In the present case the Complainant was requesting copies of the books and records, not the opportunity to examine them.

¹ 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...

² 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.

Required Actions

The Association must provide the Complainant all the records that she has requested within **fourteen days** of the date of this Determination, as long as the Complainant meets her payment obligation under the cost schedule existing at the time of her request. If the Association believes it has a valid reason, under the law, for denying the Complainant's specific records requests, it must contact this office immediately to discuss that reason. A failure to provide the requested documents may result in referral of this matter to the Common Interest Community Board for review and any action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Peachtree Community Association