



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

May 20, 2019

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2019-02545

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 February 6, 2019. The Association provided a response to the Complainant dated March 5, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 10, 2019 and received the same date.

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 the Association violated §55-510 of the Property Owners' Association Act when it did not provide copies of documents that the Complainant requested by email. Specifically, the Complainant requested a copy of a Fire Marshall's report and an Underwriter's report. The Complainant further noted that the Association did not provide the requested documents "within the 5 business day timeframe mandated in the Virginia Property Owners' Association Act."

The Association provided a final decision to the Complaint that stated "[t]he Board unanimously agreed that the Association and Management had just received the letter from State Farm and since Management had already been working with the Fire Marshall they have provided the email communications." No other information was provided in reference to the Complaint.

I do not understand the Association's final decision and because there was no information or documentation provided that demonstrated that the Association had provided the Complainant copies of the requested documents, I can only assume such documents were not provided. A failure to provide copies of requested documents is a violation of §55-510 of the Property Owners' Association Act, and specifically paragraph E¹ of that statute which discusses providing copies or documents rather than allowing the examination or copying of them.

As to the Complainant's expectation that copies of the documents be provided within five days, under §55-510(B)(2)², the five-day time frame does not address a request for copies of documents, only the right to examine them. 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 documents, not the opportunity to examine them.

Required Actions

The Association must provide the Complainant the copies of documents that were requested, unless those documents may be excluded pursuant to language contained in §55-510. The documents must be provided within two weeks of the date of this Determination. Prior to providing copies, the Association may require payment, as set forth in the statute, in accordance with an adopted cost schedule. The Association will also need to provide this office an outline of the documents it is providing to the

¹ E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

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. (emphasis added for clarity)

Complainants, and if any documents are being excluded, the reason for doing so. Such outline must be provided within two weeks of the date of this Determination.

The Association failed to hand deliver, mail or email the final determination within seven days of the Association's decision as required by the Regulations (18 VAC 48-70-50(8))³. The final determination letter was dated March 5, 2019, but no evidence could be provided by the Association that demonstrated the letter was sent any sooner than April 6, 2019, more than thirty days later. The final determination letter states that consideration of the Complaint took place on February 28, 2019. In light of the fact that this delay appears to be a violation of the Common Interest Community Ombudsman Regulations, this matter will be referred to the Complaint Analysis and Resolution section at the Department of Professional and Occupational Regulation for further review.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association

³ 8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.