



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

August 15, 2019

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Randolyn Halterman
Association: Bay's Edge Condominium Association
File Number: 2020-00112

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 May 6, 2019. The Association provided a response to the Complainant with no date, but according to the Complainant it was hand delivered to her on June 6, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated July 3, 2019 and received July 5, 2019.

Determination

The Complainant submitted an Association Complaint consisting of roughly ten separate complaints, some of which contained multiple allegations. None of the submitted complaints alleged a specific violation of common interest community law, meaning that there was no mention of a particular statute in any of the allegations. The Complainant did submit a letter with her NFAD that provided specific Virginia Code sections in relation to the complaints, but as is always the case, this office cannot consider additional information provided **after** the Association has considered a complaint and provided a final determination. As such, only the original complaints will be addressed here.

The first complaint alleged that the Association refused to allow a review of the books and records without payment of a \$75.00 per hour fee. No additional information was found in the NFAD relating to this complaint so it is unclear whether the request to review the books and records was in accordance with the law, which in this case would be 55-79.74:1, or if the Association provided the Complainant a cost schedule as required by the same statute.

The Association responded to this allegation by stating that it had adopted a cost schedule in 2012 and the schedule included a \$50 per hour fee. The Association stated that this fee has not increased and the cost schedule was provided to the Complainant. According to the Association response, the Complainant did not complete the necessary form for document review.

Since no copy of any request for access to or copies of the books and records could be found in the documents provided, this office has no way of determining if the request or requests were made in accordance with the applicable law. In addition, the Association's response directly contradicts the allegations by the Complainant. Without further information, this office cannot determine if the Association was in violation of common interest community law.

The second complaint alleged that the Association continued to employ a Common Interest Community Manager who was not licensed. The Association responded to this complaint by noting that it was unaware of the lapse and that the Manager had offered to resign and the Association would be seeking new management. While it is absolutely correct that 54.1-2346 requires individuals or companies that qualify as Common Interest Community Managers to be licensed, that statute does not require associations to hire only licensed common interest community managers. As such, no violation can be found in relation to this complaint.

The third complaint alleged that the complainant was excluded from D&O (I must assume the Complainant meant Directors and Officers since no additional information was provided) coverage, and that documentation had been provided to someone claiming the complainant was a plaintiff in an ADA lawsuit. The complainant claims this was untrue and she was only a witness. Virginia Code §55-79.81 does require an association to obtain either a fidelity bond or an employee dishonesty policy but does not mention Directors and Officers insurance coverage. As such, if the failure to provide D&O coverage for the complainant is a violation of any type, it seems it could only be a violation of the association's condominium instruments and therefore not appropriate for the association complaint procedure. Because we have no jurisdiction over this matter, no determination can be provided.

The Complainant alleged in her fourth complaint that the Association spent reserves without notification of the homeowners. She further stated that there was no supportive documentation and the Association refused to allow knowledge of expenses or accounts payable. The Association responded to this complaint by outlining the repairs that were completed and noting that the use of reserve funds had been discussed and approved during homeowner meetings. Ultimately, there is no requirement in the Condominium Act that owners be given the opportunity to approve expenditure of reserve funds. If such a requirement exists, it must be part of the condominium instruments and we have no jurisdiction over those documents and therefore cannot provide a determination on this matter.

The fifth complaint alleged that the Association changed a "homeowner amendment" without homeowner involvement or knowledge. There was simply no information provided in the NFAD to explain what the term "homeowner amendment" meant. The Association stated that no change has been made, nor could there be without

owner approval and referred to the document as a “homeowner agreement” but it is still not clear to me what, exactly, it is that the parties are referencing. Without knowing what the Complainant and Association are referring to here, it is impossible to provide a determination.

The Complainant also alleged that the Association refused to disclose a number of different documents but did not specify which documents and had already referenced a failure on the part of the Association to provide access to the books and records earlier in her NFAD. The Complainant also alleged that the Association failed to follow “State and governing documents” but did not specify which “State documents” were not being followed. Due to a lack of specificity regarding these allegations, no determination can be provided.

Additional complaints that appear to have no basis in common interest community law and therefore are not appropriate for the complaint process or review by this office included an allegation that the Association continued to use the same contractor, allowed “abuse/disrespect” by board members, and refused to respond to emails. Because these allegations are in no way connected to common interest community law or regulations, no determination can be provided.

Due to a lack of documentation, evidence, and specificity as to the allegations, this office is unable to provide a determination on any of the complaints set forth in the NFAD. There were, however, several violations of the Common Interest Community Ombudsman Regulations, all related to the Association’s final determination. No date was included on the final determination, which is required by 18 VAC 48-70-50(9). The Association also did not include its registration number as issued by the Common Interest Community Board¹. Finally, the Association did not include the Complainant’s right to file a Notice of Final Adverse Decision with this office, along with the necessary contact information for doing so (18 VAC 48-70-50(10)).²

Required Actions

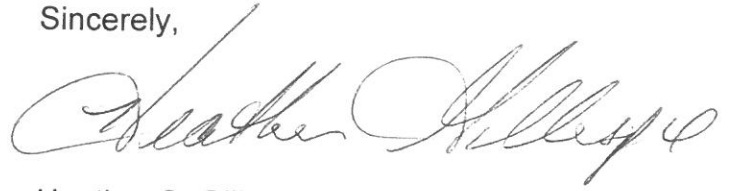
The Association must ensure that it familiarizes itself with the Common Interest Community Ombudsman Regulations and is poised to provide a final determination in the future that fully complies with those regulations. Any failure to comply may result in a referral of such matter to the Common Interest Community Board for whatever action it may deem appropriate.

¹ 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided. 48 VAC 48-70-50

² 10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information. 48 VAC 48-70-50

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
Bay's Edge Condominium Association