



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

April 8, 2020

Brian Ball
Secretary of
Commerce and Trade

Complainant: James Buckley
Association: The Meadows at Dahlgren
File Number: 2020-02070

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 20, 2019. The Association provided a response to the Complainant dated February 3, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 18, 2020 and received the same date.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant has alleged that the Association has not provided him the right of access to books and records that he is afforded under §55.1-1807¹ and §55.1-1815² of the Property Owners' Association Act. Specifically, the Complainant stated that the Association has failed to meet the 10-day timeframe for providing access to association books and records. The Complainant requested copies of records, in writing, on August 14, 2019. The Association responded on August 16, noting that it will be some time before all the requests could be met as the Treasurer was out of town. The Association also asked the Complainant to provide a purpose for his request. The Complainant provided a revised document request on August 27 that included reasons for his requests.

The Association responded to the allegation that it had failed to provide access to the books and records in a timely manner by outlining its response to each records request that had been made. While this information was likely helpful to the Complainant, it did not address the failure to provide the requested documents in a timely manner.

The Property Owners' Association Act provides association members the right to either examine and copy the books and records of their association or to obtain copies of those documents. When an owner wishes to examine the books and records, after making his or her request in writing and stating a proper purpose, an association must provide the right to examine the books and records upon ten days' notice for a self-managed

¹ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;

² A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

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, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

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.

association. A request for copies of documents, however, is different, since there is no timeframe provided under the law for receipt of requested copies.

The Complainant's request for records was a bit confusing as the initial request was for copies of records to be provided at a board meeting the following day. The ten-day notice would not apply since the request was for copies not examination. The second request, where the Complainant provided a purpose for his document requests, asked either that the documents be emailed to him, which would not need to be done within ten days, or made available for inspection, which would need to be done with ten days' notice.

The Association was not in violation of §55.1-1815 of the Property Owners' Association Act when it failed to provide the records outlined in the first request. No purpose was provided and the Association can require a purpose under the statute. However, the Association was not in compliance with the statute when it failed to provide the requested records after receiving a second request which outlined the purposes for each request and agreed to an electronic copy or the right to examine the records. While there is not a required time frame for providing copies, an absolute failure to provide anything would appear to be a violation of the statute, and there was not opportunity provided to the Complainant to examine the records until months later. I am also concerned that the Association does not have its files sufficiently organized to meet requests for timely examination when a board member is out of town. In this instance it appears that it took the Association five months to provide a time and location for the Complainant to examine certain records. §55.1-1815 requires access to the books and records "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." It appears that there are times when the Association does not have the capacity to provide access in the statutory timeframe required under the Property Owners' Association Act.

Required Actions

The Association must determine how it can respond in a timely manner to any future requests to examine the books and records of the association. This likely means it will need to consider its method of records maintenance. While it can be difficult for self-managed associations to respond to record examination requests when there is no central office, this is an issue that all self-managed associations must address, and likely the reason they are given more time to respond than a professionally managed association.

If there is a proper request for examination of the books and records in the future and the Association is unable to provide that right of examination in a manner that complies with the Property Owners' Association Act, the matter will be referred to the Common Interest Community Board for any action it may deem appropriate.