



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Brian P. Wolford
Interim Director

September 10, 2024

Complainant: Ralph H. Debnam
Association: Lake of the Woods Association, Inc.
File Number: 2024-0342

AMENDED¹ DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on August 8, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Ralph H. Debnam ("Complainant"). The Complainant initially submitted a complaint to the Lake of the Woods Association, Inc.'s Board of Directors ("Board") on June 17, 2024, and the Board issued a notice of final decision on July 17, 2024. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issue to be Decided

In the Complaints, the Complainant raises one issue: whether the Board failed to provide the requested documents to the Complainant. As explained below, the Office finds that the Board's actions were consistent with the applicable law.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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

¹ The Determination is amended to correct the second sentence on the Conclusion section on page 3 to reflect: "this Office cannot conclude that the Board's actions were 'inconsistent' rather than 'consistent' with the applicable laws."

submitted in accordance with the applicable association complaint procedure, and as specifically set forth in the CIC 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 CIC 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, and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

The only documents that will be considered when reviewing a NFAD, in accordance with CIC regulation 18 VAC 48-70-90, are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

For the reasons discussed more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the Board’s actions were consistent with the applicable law. This determination will address the issue raised by the Complainant below.

Board failed to provide the Complainant the document requested.

The Complainant requested voting information, specifically “a copy of the written certification document dated June 10, 2024, provided to the designated point of contact in the Lake of the Woods from Vote-now.com LLC. On the voting results of the Referendum to Amend the Restrictive Covenants.” The Complainant contended that for the Board to announce the voting results on June 10, 2024, a document had to have been provided by the Vote-Now stating the results of the electronic voting the company was hired to facilitate.

The Board, in its final decision dated July 17, 2024, stated that the document requested by the Complainant does not exist. The Board emphatically stated that Vote-Now does not have and did not provide the Association with a written certification document dated June 10, 2024.

It is true that the Virginia Property Owners Association Act gives a homeowner the right to examine or obtain all the books, records and minutes of the association, subject to some exclusions and exceptions. *See*, Va. Code §§ 55.1-1807 and 55.1-1815. Under the applicable laws, the association is obligated to keep for inspection and copying:

1. All financial books and records in the form of:
 - (a) Detailed records of receipts,
 - (b) Detailed records of expenditures, including maintenance and repair expenses, and
 - (c) Any other expenses incurred by or on behalf of the association.
 2. All books and Records including:
 - (a) Membership list
 - (b) Addresses, and
 - (c) Actual salary of the association employees earning over \$75,000. And
 - (d) Aggregate salary information of the other association employees.
 - 3 Minutes of meetings up to 60 days, and
 - 4 Recorded active liens.
- Va. Code §55.1-1815.

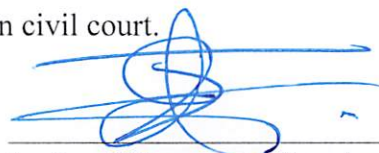
As apparent from the list above, a copy of written certification document showing electronic vote results is not in any of the categories. As a result, this Office cannot mandate the Association to provide a document that does not exist and the Association is not obligated to keep, especially considering the Board's assertions that the third party that conducted the electronic voting, did not have, and did not provide the Association with a copy of the requested document.

Conclusion

As to the Complainant's complaints, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office cannot conclude that the Board's actions were inconsistent with the applicable laws. Notwithstanding this conclusion, the Office respectfully encourages the Board, to the extent that it has not already done so, to share details about the members' votes on this issue as it deems appropriate.

Decision

This Office finds no violation of the applicable laws on the part of the Board, and therefore no action is required of the Board. If the Complainant is dissatisfied with this determination, or part thereof, the Complainant could seek remedies in civil court.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Lake of the Woods Association, Inc.