



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

Brian P. Wolford
Interim Director

G. Bryan Slater
Secretary of Labor

August 5, 2024

Complainant: Curt Dierdorff
Association: Heritage Hunt Homeowners Association, Inc.
File Number: 2024-0

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on March 18, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Curtis Dierdorff ("Complainant"). The Complainant initially submitted a complaint to the Heritage Hunt Homeowners' Association, Inc., Board of Directors ("Board") on January 24, 2024, and the Board issued a notice of final decision on February 24, 2024, on the complaint. 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.

Issues to be Decided.

In the Complaints, the Complainant raises one major issue: (1) Whether the Board's decision to charge fees to have access to the Association records violates applicable law. As explained below, this Office concludes that the Board's decision is in violation of the Common Interest Community 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 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, 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 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

As described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the Board’s action to require fees to access the records violates the Common Interest Community law. This determination is addressed below.

1. Does the imposition of fees to access the Association records violates the law?

The Complainant alleges that he made a proper request to review the invoices from the Association lawyer who is employed by the Association on a retainer plus fees basis. The Complainant states that he had legitimate reasons: including but not limited to; needing such information for an assignment he accepted during a board meeting of the Association. The Complainant states that upon request, he was informed that he needed to pay \$75 per hour for the manager’s time and \$50 per hour for the staff ‘s time in preparing the documents to be reviewed. The Complainant argues that the decision to impose fees as condition to access to the Association record is contrary to the requirements, spirit, and intent of the applicable law since such fees would discourage homeowners from exercising their rights to access to the books and records of the association.

The Board in its response simply states that it denies the Complainant’s request to waive fees for access to Association records, and that the Board’s decision comports with the requirements of applicable law.

The Common Interest Community law at issue is Property Owners Association Act ("POAA"), Va. Code §55.1-1815. It gives homeowners the right to inspect, and/or obtaining all the books and records of the association with some exceptions. Va. Code §55.1-1815. While Subsection (E) of Va. Code § 55.1-1815 permits an association to impose fees for its actual costs, it is only when the member request copies. It states:

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 of such materials and labor**. 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. Va. Code §55.1-1815(E). (Emphasis added).

In this case, there is no evidence to show that the Complainant was requesting copy of the documents. The original complaint shows that the Complainant's request was to review/examine invoices paid by the Association for legal services. Additionally, the final decision of the Board categorized the Complainant's request as a request for access to Association records. In accordance with applicable law, a member's right to access an association record is only limited as thus:

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. Va. Code §55.1-1815(B). (Emphasis added).

Since no limitation, exemption/exception exists under Subsection B, or Subsection C, of the Va. Code §55.1-1815, the Board cannot deny the Complainant the right of examination on the basis of nonpayment of fees. In sum, the plain language of Va. Code § 55.1-1815 limits the imposition of a fee to access association records only to when a copy of such records is requested. Here, the Complainant specifically exercises his right to inspect/examine the records, which does not require the association to make copies, etc., without any fees given the language of Va. Code §55.1-1815(B).¹

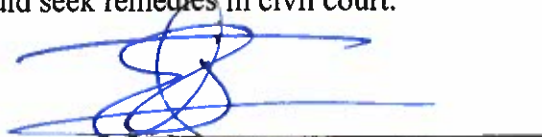
Conclusion

¹ Note that under Subsection D of Va. Code §55.1-1815, an associate may impose reasonable fees for the actual cost of redacting the records for review, but that issue is not before this Office in this case.

Based upon the information in the record, including the original complaint, its accompanying documents, the NFAD, this Office finds that the Board's outright imposition of fees to access the Association record is contrary to the applicable law.

Decision

This Office, therefore, recommends that the Board grant the Complaint access to examine (not copy) the Association record without imposing fees. If any party is dissatisfied with this determination, or part thereof, the party could seek remedies in civil court.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Heritage Hunt Homeowners Association.