



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

G. Bryan Slater
Secretary of Labor

James B. "Jeb" Wilkinson, Jr.
Director

July 22, 2025

Complainant: Curtis Dierdorff
Association: Heritage Hunt Homeowners' Association, Inc.
File Number: 2025-02079

OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on February 24, 2025, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Curt Dierdorff and Susan Hiscutt (collectively, the "Complainants"). The Complainants submitted a complaint to the Heritage Hunt Homeowners' Association, Inc.'s Board of Directors ("Board") on December 6, 2024. The Board issued a final decision on January 30, 2025. 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 Raised

The Complainants raise a single issue in their complaint that is properly before this Office, specifically that the Board acted in violation of Va. Code § 55.1-1825(D) by applying for and obtaining a Paycheck Protection Program (PPP) loan under the CARES Act during the COVID pandemic. In addition, Complainants raised two other issues regarding compliance with the provisions of governing documents – that the Board's actions to obtain a PPP loan violated the association's Declaration and its Articles of Incorporation. The latter two alleged violations are not properly before this Office. The Office's determination for the single issue stated above is discussed below.

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."¹ The process of making such a determination begins with receipt of an NFAD that has been submitted to this office in accordance with §54.1-2354.4 of the

¹ See, Va. Code § 54.1-2354.4 and 18 Va. Admin. Code § 48-70-120.

Code of Virginia of 1950, as amended (“Va. Code”) and the Common Interest Community Ombudsman regulations (“Regulations”). An 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 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.² 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 an NFAD, in accordance with CIC regulations, 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.³ Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. The Office may request additional information from an association, and in such cases, the association shall provide the information within a reasonable time.⁴ 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.⁵

Determination

As noted above, the Complainants present a single issue in their NFAD complaint. The findings of the Office are discussed more fully below and are based on a review of the materials submitted with the NFAD. The following speaks to whether the Board’s actions, in the Office’s view, were consistent with the applicable common interest laws or regulations.

Did the Board act within its authority when it applied for and received a federal PPP loan during the COVID pandemic?

During the COVID pandemic, the Board’s president at the time submitted, on behalf of the association, an application for a PPP loan in the amount of \$397,000. The association’s application was approved, and the funds were received by the association. The loan was apparently forgiven by the federal government in 2021.

² See, Va. Code § 54.1-2354.4(C).

³ See, 18 Va. Admin. Code § 48-70-90.

⁴ See, Va. Code § 54.1-2354.4(C).

⁵ *Id.*

In 2024, the U.S. Attorney's Office for the Eastern District of Virginia served a Civil Investigative Demand on the association announcing an investigation to determine whether there had been a violation of the False Claims Act or FIRREA.

The Complainants allege that the Board violated the statutory provisions for a property owners' association board to borrow money on behalf of the association. Specifically, a property owners' association's authority to borrow is set forth in Va. Code § 55.1-1825(D), which states:

Unless the declaration provides greater or lesser authority, the board of directors may borrow money on behalf of the association for *maintenance, replacement, repair, and restoration of capital components and for funding recommended reserves* and shall have the right and power to assign and pledge all revenues to be received by the association, including annual and additional assessments to secure the repayment of any sums borrowed by the association from time to time for such purposes. (Emphasis added).

This statutory provision, though, was not added to the Code of Virginia until 2024, when it was introduced in, and passed by, the General Assembly. The Governor signed the measure into law on April 2, 2024, and it became effective on July 1, 2024.⁶ In Virginia, laws are applied prospectively unless the General Assembly clearly expresses an intent for the legislation to apply retroactively also.⁷ Therefore, while the concerns of the Complainants with regard to the underlying factual scenario are understandable, the Office cannot find that the Board violated Va. Code § 55.1-1825(D) given that the statutory provisions in subsection (D) were not in effect at the time the Board president applied for and obtained the PPP loan and the legislation did not plainly manifest an intent to be applied retroactively. As indicated above, it is not within this Office's jurisdiction to determine whether such actions may have violated either the association's Declaration or Articles of Incorporation. Such issues would need to be decided in a court of law.

Decision and Required Actions

In light of the determination that the Board did not violate Va. Code § 55.1-1825(D) as alleged, there is no action required by the Board. If the Complainants are dissatisfied with this determination, or any part thereof, the Complainants may wish to consult with counsel of their choice and/or seek remedies in civil court.



R. Thomas Payne II, Esquire
Interim CIC Ombudsman

RTP II/bt

cc: Board of Directors, Heritage Hunt Homeowners' Association, Inc.

⁶ See, 2024 Va. Acts ch. 324.

⁷ See, e.g., Va. Elec. And Power Co. v. State Corp. Commission, 300 Va. 153, 164-166, 861 S.E.2d 47, 53-54 (2021)(statutes "[are] not applied retroactively absent a manifest intent to the contrary").