



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

March 23, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Robert T. Keelin
Association: Falls Run Community Association
File Number: 2022-01911

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 February 3, 2022. The Association provided a response to the association complaint dated February 24, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 6, 2022 and received March 15, 2022.

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 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.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD 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.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged a violation of §55.1-1809(A)(9)¹ of the Property Owners' Association Act. This statute pertains to the content of the association disclosure packet, and this particular provision requires that an association provide a statement as to whether any improvement or alteration to the specified lot is in violation of the governing documents of the association.

The Complainant alleges that the Association failed to include an existing grass violation in its disclosure packet when he purchased his lot in 2016. The Association has now cited the Complainant for the same grass violation that existed when the prior owner still owned the lot. The Complainant alleges that when the prior owner was cited for the same grass issue, no follow up inspection was ever done to determine if he had removed the problem grass and replaced it with the correct grass prior to the purchase. The Complainant believes the Association failed to include the grass in the inspection it carried out in preparation for the disclosure packet issued in June 2016, and that there was a violation at that time and the disclosure packet should have documented such violation.

¹ A. Within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, the association shall deliver an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned to such lot, is or is not in violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association;

The Association responded to the complaint by stating that it deferred the Complainant's "request to bear the cost of turf replacement..." By this, the Association appears to be advising that it does not believe the disclosure packet was inaccurate and therefore has no obligation to pay for the grass replacement.

While the prior owner may have been cited for having a violation regarding the type of grass in his yard, and he may not have taken the necessary steps to address that violation, there is simply no way for this office to determine if there was an existing violation on the date specified in the disclosure packet that should have been included in that packet. There is simply not enough information in the NFAD to allow this office to come to that conclusion. As such, no determination can be provided, since it is not clear that the Association was in violation of §55.1-1809(A)(9).

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Falls Run Community Association