



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

May 12, 2022

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Neal Witherspoon
Association: New Town Residential Association, Inc.
File Number: 2022-02289

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 an undated complaint to the Association. The Association provided a response to the association complaint dated April 8, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 22, 2022 and received May 4, 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 §55.1-1805¹ of the Property Owners’ Association Act and Section 9.13 of the Amended and Restated Master Declaration of Protective Covenants and Restrictions. The Complainant wrote that his fenced lot does not qualify for lawn services under the governing documents of the Association. However, the Association has provided such services since 2014, and the Complainant has paid “lawn assessments” in return. In January 2022, the Complainant was notified that the Association would no longer provide lawn services in the fenced area of the Complainant’s yard, but would continue to provide them for the unfenced area. The Association told the Complainant he would have to pay an assessment that was the same as if he had received full lawn care service. The Complainant believes that since he is not receiving full lawn service, he should not have to pay the same amount as other who are receiving full lawn service.

The Association responded to the complaint by noting that “VA Code 55.1-1805 states that [sic] Association declaration takes precedence over this section, ‘Except as expressly authorized...in the declaration...’” The Association goes on to state that the Board of Directors is given sole authority to establish assessments, and that consent of the owners is not required. The Association also stated that it is not permitted to provide lawn services to fenced yards, per the Supplemental Declarations.

¹ Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55.1-1810 or § 55.1-1811 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-1810 or § 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

Because the Association has responded to the complaint by referring to its governing documents and its interpretation of and obligation under those documents, this office cannot determine if the Complainant has been improperly assessed. The application of §55.1-1805 can be dependent upon an association's declaration, and in this case the Association has stated this is the case. As such, this office cannot delve deeper into this issue, since doing so would require review and interpretation of the declaration and other governing documents. Because we have no authority to review or interpret governing documents of an Association, no determination can be provided.

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
New Town Residential Association, Inc.