



COMMONWEALTH of VIRGINIA

Glenn A. Youngkin
Governor

Department of Professional and Occupational Regulation
July 27, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Laura Shears
Association: Farmcolony I Homeowners' Association, Inc.
File Number: 2023-00047

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 association complaint to the Association dated May 10, 2022. The Association provided a response to the association complaint dated June 5, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 18, 2022 and received July 1, 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 §55.1-1815(B)¹ and §55.1-1816² of the Property Owners' Association Act. Specifically, she alleges that the Association has failed to allow her to inspect a report despite her three requests to do so. The Complainant said that she made her requests on April 13, 2022, at a board meeting on April 16, 2022, and on April 20, 2022. The Complainant stated that she is a member in good standing and provided a purpose when she made the requests.

The allegation that the Association was also in violation of §55.1-1816 is related to her request, at the board meeting, to review the report. The Complainant believes the report should have been available to her under the portion of the statute that allows for inspection of the agenda packet by the membership. The Complainant believes the report was part of that packet.

The Association's response to the allegations stated that the complaint was without merit because the document requested does not exist. The Association wrote that the Chair of the committee responsible for the report had submitted meeting minutes but did not submit the report, due to a lack of instruction. As a result, the report was not available. The Association also noted that its attorney had instructed the board to have committees submit their minutes during the board meeting.

If the document that the Complainant requested to examine does not exist, the Association is not obligated to create it in order to be able to provide access to it. This office has no way to determine whether the requested document exists, and can only base its response to a NFAD on the information provided in the Complaint and the Association's final decision. There was no evidence in the NFAD that indicated the

¹ Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent...

² Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

requested report existed at the time of the request and the Association stated that it did not exist. As such, I cannot find the Association in violation of §55.1-1815 or §55.1-1816 since there is no obligation to create a document if it does not exist.

Since the Complainant's requests only appear to have referenced the report in its entirety, I also do not find that the association should have provided the minutes, which may have become available at the April 16 meeting or shortly thereafter. The applicable statute requires an owner to request documents with specificity, and in this case, the report was requested, not the minutes. However, it would appear that the Complainant could now request the minutes and they may be available for inspection.

Required Actions

No action is required of the Association as it pertains to the matter of the report or minutes. However, the Association failed to provide necessary information in its final decision.

The Common Interest Community Ombudsman Regulations require an association to include several key items in a final decision:

1. The right of a complainant to submit a Notice of Final Adverse Decision to this office.
2. The contact information for this office.
3. The Common Interest Community Board Registration number of the association
4. The name and license number of the common interest community manager, if applicable.

The Association must ensure that it is familiar with these requirements and include the above information in all future final decisions.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Farmcolony I Homeowners' Association, Inc.