



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

October 25, 2022

G. Bryan Slater  
Secretary of Labor

Demetrios J. Melis  
Director

Complainant: Joe Hatcher  
Association: Southern Hills Homeowners Association  
File Number: 2023-00856

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*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.*

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## Complaint

The Complainant submitted a complaint to the Association, dated June 24, 2022. The Association provided a response to the association complaints dated September 29, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received October 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 that the Association failed to provide access to the books and records of the association, which would constitute a violation of §55.1-1815(B)(1)<sup>1</sup> of the Property Owners’ Association Act. The Complainant requested the Association’s membership list and addresses on June 16, 2022 and was denied. He then forwarded the same request to the President of the Association this time asking to examine and copy the membership list. The President responded four days later, stating that the request was defective, and the Complainant could correct the request. The Complainant asked the President how the request was defective and did not receive an answer.

The Association’s response to the Complaint stated that the request for records, in violation of §55.1-1815(B)(2)<sup>2</sup> failed to “reasonably notif[y] the purpose for the request...” The Association also referenced requirements under the Nonstock Corporation Act but because that act does not fall under our authority it will not be

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<sup>1</sup> B. 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, including:

1. The association’s membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

<sup>2</sup> 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.

considered as part of this determination. However, the statutes referenced simply further cemented the requirement for a proper purpose. The Association wrote “[i]n summary, although your request was made in good faith, the lack of the above required statement(s) makes this request defective and non-compliant to the required statutes.”

I am disappointed that the Association was unwilling to explain to the Complainant that he had failed to provide a proper purpose. Had it done so, the complaint submitted to the association would have been unnecessary and this determination would have been unnecessary. However, the Association is correct that the Property Owner’s Association Act does require that a request for books and records be for a proper purpose and that the written notice submitted by a member requesting access to the books and records must reasonably identify the proper purpose. I do not find the Association to be in violation of the Property Owners’ Association Act. I would, however, suggest that the Complainant, if he chooses to do so, resubmit his request and include a proper purpose. I assume the association will then provide the Complainant the access to the records that he is seeking.

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  
Southern Hills Homeowners Association