



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

January 3, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Nathan Schultz
Association: Chimney Hill Community Association, Inc.
File Number: 2023-01239

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 August 16, 2022. The Association provided a response to the association complaints dated October 18, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 15, 2022 and received November 16, 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 inappropriately applied two postage cost charges to his account when it mailed his notices of consideration via certified mail. The Complainant wrote that he was told the \$6.75 charge for each mailing “comes from the production of records cost schedule.” He noted that filing an association complaint is not a records request and such costs should not apply to the mailing of the notice of consideration. The Complainant quoted a portion of the Property Owners’ Association Act, §55.1-1815(D):¹ “provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.” He stated that the complaint process is not a records request and that the Association had other delivery options to respond to the complaint.

The Association responded to the complaint by referencing its Declaration, and language in that document that it believes supports its decision to charge the certified mailing fee. According to the Association, owners “are responsible for any charges imposed by the Association, which include any certified mailing costs.”

¹ D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

I agree with the Complainant that filing a complaint and any mailing that may take place in conjunction with the complaint would likely not be connected to the cost schedule required by the Property Owners' Association Act if an association intends to charge for copies of books and records. However, based on the complaint itself and the Association's response, the charge does not seem to be for copies of records, but instead, for the certified mailing of correspondence related to the Complainant's association complaint.

The Common Interest Community Ombudsman Regulations do not address whether an association can charge a complainant for mailing certified correspondence related to a submitted association complaint. Since there is no guidance in the Regulations, and because the Association has referenced its Declaration, which is one of its governing documents, this office cannot provide a determination on this matter. As noted in the prefatory language in this document, this office has no jurisdiction over the governing documents of an association and cannot interpret or enforce those documents. As such, I cannot make a determination whether the Declaration requires or allows the Association to charge for certified correspondence.

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
Chimney Hill Community Association, Inc.