



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

December 28, 2022

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: August C. Neitzel, Jr.
Association: Regency at Dominion Valley Owner's Association, Inc.
File Number: 2023-01276

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 October 18, 2022. The Association provided a response to the association complaints dated November 4, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 12, 2022 and received November 17, 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 Section 9.2 of the Association's Bylaws. This allegation is based on a request for copies of Design Review Applications that had been submitted by several other owners in the community and approved by the Association. The Complainant was denied access to the applications.

The Association responded to the complaint by stating that the documents requested are not part of the books and records of the association. Further, the Association noted that under a policy resolution, individual member files are exempt (presumably from examination and copying).

As is noted in the preamble to this determination, an association complaint must pertain to common interest community law or regulations. The bylaws of an association are not common interest community law and therefore are not an appropriate topic for an association complaint or subsequent NFAD.

While there is a statute under both the Condominium Act and the Property Owners' Association Act (it is not clear to me which of these acts are applicable in the present case) that addresses access to books and records, it cannot negate the fact that the Association has stated the requested documents are not part of the association books and records and that they are specifically exempt under an association policy resolution. As such, even if the Complainant had referenced the proper statute, rather than the bylaws, the outcome would have remained the same. Associations are not required to provide access to documents that it does not maintain as part of its books and records and it can exempt individual owner files from examination, including any individual owner's files kept by or on behalf of an association.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Gillespie". The signature is fluid and cursive.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Regency at Dominion Valley Owner's Association, Inc.