



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

June 23, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Robert Navin
Association: Edgemoore Homeowners Association
File Number: 2023-02926

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 January 6, 2023. The Association provided a response to the association complaint that was undated. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 25, 2023 and received June 5, 2023.

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 included additional information that was not part of the original complaint submitted to the Association through the association complaint process. As has always been the policy of this office, such additional information will not be reviewed or considered as part of this determination since the Association has not had an opportunity to respond to the additional information.

The Complainant has alleged that the Association is in violation of §55.1-1815¹ of the Property Owners’ Association Act. In his complaint to the association, the

¹ The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

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
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

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.

Complainant wrote that his requests for access to minutes of board meetings had not been addressed, nor had his request to be notified in a timely manner of when and where board meetings would be held. The Complainant referenced two emails in support of his allegations, but the emails were not included in the Notice of Final Adverse Decision.

The Association responded to the two complaints by stating that the minutes for all of 2022 had been provided to the Complainant, as had the minutes from January through April 2023. The Association said that it will post monthly minutes on the HOA website.

As for the meeting notice, the Association wrote that meeting minutes will contain information on when and where the next meeting will be held. If the Association does not know when and where the meeting will be held, it stated that it would notify the Complainant when it made a decision.

It is impossible for this office to provide a determination as to whether the Association is in violation of §55.1-1815 of the Property Owners' Association Act, due to the fact that the Association has claimed it provided the Complainant the documents he requested, and we have no idea what documents actually were requested. A copy of the Complainant's request for the books and records was not included with the NFAD, so we cannot determine exactly what documents were requested and whether they were requested in a manner that fully complied with the law.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;
8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or
9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

The Association does appear to be addressing notice requirements for board meetings, which fall under §55.1-1816² of the Property Owners' Association Act. That statute requires an association to publish meeting notice where it is reasonably calculated to be available to a majority of owners. Generally, posting notice on an association website can meet this requirement.

Required Actions

Because this office cannot make a determination on this complaint, I can only suggest that if the Association has not provided the Complainant the documents he requested (assuming the request was in writing, stated a proper purpose and was specific about what documents he wished to examine or obtain) that it do what is necessary to make those documents available for examination or to provide copies.

Several issues do need to be addressed regarding the Association's response to the Complainant. Final decisions on association complaints must contain certain information as set forth in the Common Interest Community Ombudsman Regulations. Specifically, 18 VAC 48-70-50³ requires that the Association date the final determination, provide the association's Common Interest Community Board registration number, and provide the complainant notice of his right to file a Notice of Final Adverse Decision with this office as well as the contact information for doing so. The Association did not include any of this information and needs to ensure that it does include it for any future complaints it receives.

² All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

³ The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with § 54.1-2354-1 of the Code of Virginia or the requirements of this chapter.

8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.

9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Edgemoore Homeowners Association