



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

September 25, 2023

Glenn A. Youngkin  
Governor

G. Bryan Slater  
Secretary of Labor

Complainant: William Pfeil  
Association: Regency at Dominion Valley Owners Association, Inc.  
File Number: 2024-00556

Demetrios J. Melis  
Director

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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 August 23, 2023. The Association provided a response to the association complaint dated August 28, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 28, 2023 and received September 6, 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.

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

This Determination is final and not subject to further review.

### Determination

The Complainant requested an electronic copy of the association's monthly financial statement prior to each Finance Committee meeting so that the Complainant can review the documents prior to the meeting and ask questions during the open forum portion of the meeting. The Complainant estimates that the documents would be approximately 144 pages long.

The Complainant alleged that the Association has violated §55.1-1815<sup>1</sup> of the Property Owners' Association Act, because it did not provide him the documents that he

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<sup>1</sup> A. 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

requested. The Complainant wrote that the Association, through its Manager, denied him the documents "due to the sensitivity of some reports." He further noted that the documents did not fall under any of the nine exclusions outlined in the Property Owners' Association Act.

The Association responded to the allegation by stating that the complete financial packet referenced by the Complainant is only distributed to the Board of Directors and the Financial Advisory Committee. The Association wrote that the packet contains sensitive financial information and therefore only certain portions of it are posted.

The statute (§55.1-1815) that addresses access to association records is quite clear that "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..." It also specifically defines what documents can be withheld from inspection by an owner in good standing and sets forth nine specific exclusions. Based on the information provided in the complaint and the Association's final decision, the documents requested by the Complainant do not seem to fall under any of the nine exceptions.

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a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

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.

Nowhere in the statute is an association tasked with providing copies of documents to a member in good standing. Instead, that member may request to examine and copy the records. In addition, even if a portion of these records did contain information that can be excluded from inspection under the statute, an association can only hold back the entire document if the exclusion applies to the entirety of the document. §55.1-1815(D) requires that "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 made available for examination and copying." The owner requesting the documents that contain exclusions is "responsible 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."

Based on the information provided in the Notice of Final Adverse Decision, I do not find that the Association was required by provide copies of the documents to the Complainant since the statute only requires that members be given the opportunity to examine and copy records. However, had the Complainant requested the right to examine and copy the documents, the Association's reason for not providing such access cannot stand. There is no right of exclusion for sensitive financial information under the law. But, since the Association is not technically obligated to provide copies and the Complainant sought copies, I cannot find the Association in violation of the applicable statute.

#### Required Actions

The Complainant has the right to request access to the association records so that he can examine and copy them. His initial request to the association did not request access, but instead requested an electronic copy. The Complainant can submit a new request to examine and copy the records if he wishes to do so.

Going forward, the Association must adhere to the requirements set forth in §55.1-1815 and provide access to the records to the extent that information contained in them cannot be excluded under the law. If there is information that can be legally excluded, and it comprises the entire document, the Association can withhold or redact those records. If redaction is necessary, because the entire document cannot be excluded, the Association will need to discuss the cost of such redaction with the Complainant in advance.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Regency at Dominion Valley Owners Association  
Community Management Corporation