



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

December 12, 2018

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Complainant: Elizabeth Zeien
Association: Green Run Homes Association
File Number: 2019-01346

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 September 16, 2018. The Association provided a response to the Complainant dated October 24, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 2, 2018 and received November 6, 2018.

Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant has alleged a violation of §55-510¹ for a failure on the part of the Association to provide requested records within five business days. The Complainant believes the Association is managed by a community manager and therefore is required to provide records within five days rather than the ten days permitted for self-managed associations. The Complainant stated that her request for records was dated August 28 and the response received from the Association was dated August 30 but a mailing receipt indicated the response was not mailed until September 5. In its response letter, the Association agreed to provide a copy of the requested document, at no cost, on September 6, 2018 in the front office.

The Association responded to the Complaint by referencing §55-509.6 and §55-509.7 of the Property Owners Association Act. These statutes are related to the responsibilities of “professionally managed” and “not professionally managed associations,” when pricing and providing disclosure packets. The Association further wrote that it does not believe it is managed by a common interest community manager, but instead is “professionally managed by an employee of the Association who provides management services.” The Association concluded that since there is no definition for a self-managed association, and if they are not managed by a “CICM,” they can only be self-managed since no other nomenclature is available.

The question as to what constitutes a common interest community manager has been confusing for many. The additional designations in common interest community law of “professionally managed” and “not professionally managed” add further confusion, as does the term “self-managed.” The definition of a “common interest community manager” can be found in §54.1-2345 of the Code of Virginia. A “common interest community manager” is defined as “a person or business entity, including but not limited to a

¹ 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 but not limited to:

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.

partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.” Management services are further defined as

(i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association

Based on the definitions provided under §54.1-2345, it would appear that an employee of an association who is providing management services would be considered a common interest community manager. The difference between an employee of the association and a *licensed* common interest community manager is that the employee does not fall under the jurisdiction of the Common Interest Community Board, as a result of an exclusion provided in §54.1-2347(A)(2). The language of that statute states that “The provisions of this chapter shall not be construed to prevent or prohibit...an employee of an association from providing management services for that association’s common interest community...”

In the present situation, the individual employed by the Association to provide management services would be considered a common interest community manager and the Association therefore is managed by a common interest community manager (just not a *licensed* common interest community manager). As such, the ten-day (self-managed) notice to examine the books and records would not be applicable, and instead the requirement would be a five-day (managed by a common interest community manager) notice. However, the determination does not stop there, owing to the fact that the Complainant requested a copy of documents, rather than requesting the right to examine or copy the records. The statutory language in §55-510 references a right of examination and the five- or ten-day notice of such intent to examine or copy the books and records. It does not, however, reference the receipt of copies of records and it does not provide a time frame in which an association must provide such copies.

The Complainant requested a copy of a particular document but did not request the right to examine or copy the document. There is no language in §55-510 that addresses how many days an association has to provide a copy of a requested document or documents. Because of this, it does not appear that the Association has violated §55-510

of the Property Owners' Association Act by failing to provide a copy of a requested document within ten days or even five days.

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
Green Run Homes Association