



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

January 7, 2021

Complainant: Wayne and Hanh Allgood
Association: Chesapeake House on the Bay, Inc.
File Number: 2021-01243

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 27, 2020. The Association provided a response to the association complaint dated November 24, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 24, 2020 and received December 1, 2020.

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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

Determinations issued by the CICO are based solely on the association complaint submitted to the association, the final decision or determination from the association, and any documents that were part of the original association complaint or the association’s decision. New information that was not included with the original complaint or the association’s final decision will not be reviewed or utilized as part of the determination, unless such information is related to the way in which an association carried out its complaint process.

Determination

The Complainant submitted a complaint to the association alleging a violation of §55-79.97 (now §55.1-1991). The Complainant stated that when she purchased two units in the condominium and received her disclosure documents (resale certificate) there was no mention of any outstanding loan owed by the Association. According to the Complainant, the Association borrowed \$350,000 in March of 2019. The Complainant purchased her units on April 15, 2019 and February 20, 2020. The Complainant believes that the Association failed to include the information required under §55.1-1991(6)¹ when it did not include the existence of the loan in the disclosure documents.

The Complainant included copies of two different budgets with her association complaint, one for 2019-2020 and another for 2020-2021. The 2020-2021 budget had a line item entitled “Mutual of Omaha Loans” for \$44,400.00. The earlier budget is entitled “2019-20 Official Chesapeake House Budget,” the later budget is entitled “2020-21 New Chesapeake House Budget.”

The Association’s response to the Complaint noted that the “final decision was addressed extensively in the October President’s message.” The Association went on to state that they had addressed and corrected the missing items from the resale documents. However, there is no explanation as to what they did to address and correct the resale documents. The Association further wrote that they had reimbursed the Complainant for the cost of a resale package. The Association also questioned why the Complainant did not bring her concerns to the Board in a regular Board meeting.

¹ A. A resale certificate shall include the following:

6. A copy of the unit owners' association's current budget or a summary of such budget prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, *including a statement of the balance due of any outstanding loans of the unit owners' association;* (emphasis added)

I could find no evidence of a \$350,000 loan in the documents that were provided in the NFAD. I did find what appeared to be a loan of \$44,400 in the 2020-2021 "New Chesapeake House Budget." There was not sufficient information provided to determine whether there is or was a \$350,000 loan, but it does appear that the Association has a loan of \$44,400.00 and based on the Complaint and the Association's response, it does not appear that the existence of that loan was provided in the resale documents received by the Complainant. The Association did not provide any information that contradicts the Complainant's allegations.

I cannot determine whether the loan in the 2020-21 budget was already in existence at the time the Complainant requested the disclosure documents for her first purchase in April 2019, but it does appear that the loan was included in the budget when she purchased the second unit in February 2020 and should have been disclosed. The Association provided no reason in its final decision as to why it did not have to include that information in the disclosure documents, so it would appear that the loan should have been disclosed and the failure to do so resulted in a violation of §55.1-1991(6) of the Condominium Act.

There are several other aspects of the NFAD that I must address. According to the NFAD and the Association's response, the Association took well over a month to provide the Complainant her final decision after consideration of the complaint. The Association stated that the final the decision was addressed extensively in the October "President's Message." While that may have been the case, a final determination is required under the Regulations and a monthly "President's Message" is unlikely to meet the criteria for a final determination set forth in the Regulations (18 VAC 48-70-50(8))². The actual final determination included in the NFAD also failed to meet the criteria outlined in the Regulations. It was dated November 24, 2020 and yet the consideration of the Complaint took place October 7, 2020. I do not know the date the President's Message was provided to the members of the association, but minimally it would appear that a decision on the Complaint was made in October and the Complainant did not receive her final decision until late November, well past the seven-day deadline for a final decision. In addition, the final decision did not include the registration number of the association, the name and license number of the common interest community manager (if applicable), notice of the complainant's right to file a Notice of Final Adverse Decision with this office and the applicable contact information for doing so. (18 VAC 48-70-50(9) and (10))³.

² 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.

³ 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.

Required Actions

The Association must ensure that its resale documents are accurate and fully comply with the requirements set forth in the Condominium Act, and specifically, that it abides by the requirements at issue in this determination, namely the disclosure of outstanding loans as set forth in §55.1-1991(6).

The Association must also take whatever action is necessary to make certain that it fully follows the Common Interest Community Ombudsman Regulations when responding to any association complaint it receives in the future. The Regulations are available on our website as is a video that explains how the complaint procedure works. It is up to the Association to make itself familiar with the complaint process and the Regulations so that it can respond to future association complaints in accordance with the Regulations.

There appeared to be two different references to the Association contained in the NFAD. One was for the Chesapeake House on the Bay and the other for the *New* Chesapeake House on the Bay. If the Association has changed its name and failed to update that information with the Common Interest Community Board, it should do so immediately as all associations are required to be registered and at present, there does not appear to be a registration for a New Chesapeake House on the Bay.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Chesapeake House on the Bay