



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

January 11, 2021

Complainant: Stephen Kim
Association: Clark's Corner Homeowners' Association, Inc.
File Number: 2021-01308

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 31, 2020. The Association provided a response to the association complaint dated November 18, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 21, 2020 and received December 4, 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 that it had failed to provide copies of requested documents. Such a failure may be a violation of 55.1-1815¹ of the Property Owners’ Association Act, a portion of which is provided in the footnote. Specifically, the Complainant stated that he has been requesting copies of the association bank statements since January 2019.

The Association responded to the complaint by noting that “[n]owhere in Virginia HOA law or the Clark’s Corner HOA Bylaws does it identify individual bank statements as HOA books/records or that the HOA must provide bank statements upon request.” The Association references the definition of books and records found in its bylaws, but of

¹ 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 a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

course that definition cannot be utilized here since it is part of the governing documents and not common interest community law. The Association believes that by providing the HOA budget and Record of Actual Income and Expenses it is meeting its fiduciary responsibilities. The Association also stated that the Complainant did not provide a purpose for his requests, which is required under the Property Owners' Association Act.

Association members in good standing must be provided access to, or copies of, books and records of the association upon a proper request. In accordance with §55.1-1815 of the Property Owners' Association Act, the request must be in writing, it must identify the specific books and records requested, and it must be for a proper purpose, and that purpose must be identified in the written request. The Complainant did not include a copy of any of his requests for the books and records in his association complaint or in the NFAD that he submitted to this office. As such, there is no way to determine if the request for the bank statements contained a purpose as required by the statute.

Even if the Complainant did include a purpose in his written requests, I believe the Association is correct in its belief that it does not have to provide the bank statements if they are not part of their books and records. There is nothing in common interest community law that specifically identifies what must be included as part of the books and records of an association. §55.1-1815(A) states: "[t]he 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."

The Association stated that it keeps a record of income and expenses that it provides to association members at the annual meeting and posts on the association's website. That may be sufficient to meet the requirements of the applicable code section as it relates to keeping detailed records of receipts and expenditures. Because there is no legal definition of "generally accepted accounting practices," I cannot determine if the association is complying with that portion of the statute.

I do not find that the Association is in violation of §55.1-1815. The Complainant may not have provided a purpose for his requests for the bank statements, which would mean the Association had no obligation to provide the requested documents, even if they were part of the books and records. In this case, however, the Association has said that it does not maintain the bank statements as part of its books and records and instead keeps a "Record of Actual Income and Expenses" that is available to all association members. The Association did note in its response to the complaint that after discussing this issue with homeowners at a board meeting, it has decided to begin including bank statements with the budget package distributed at the Annual Meeting.

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
Clark's Corner Homeowners' Association, Inc.