



# COMMONWEALTH of VIRGINIA

## Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

Mary Broz-Vaughan  
Director

April 22, 2021

Complainants: Lydia Estes and Sandra Myrick  
Association: Heritage Court Council of Co-Owners  
File Number: 2021-02067

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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 Complainants submitted a complaint to the Association dated January 2, 2021. The Association provided a response to the complaint dated March 2, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on March 17, 2021.

### 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.

## Determination

The Complainants have alleged that the Association improperly charged them for a resale certificate when they sold their unit. The Complainants stated that they were charged \$350.00 but should not have been charged more than \$146.71. The Complainants believe this improper charge is a violation of §55.1-1990 of the Condominium Act. I believe, however that the Complainants actually meant §55.1-1992<sup>1</sup>

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<sup>1</sup> A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, for the preparation and issuance of the resale certificate required by §§ 55.1-1990 and 55.1-1991, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows:

1. For the inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;
2. For preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;
3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, for expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;
4. At the option of the seller or the seller's authorized agent, for an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;
5. At the option of the seller or the seller's authorized agent, for hand delivery or overnight delivery of the resale certificate, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; and
6. A post-closing fee *to the purchaser of the unit*, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed \$50. (*emphasis added*)

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall be charged only if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest

of the Condominium Act, since that is the statute that specifically sets forth the permissible fees for resale certificates. The Complainants included additional information in a cover letter that will not be considered as part of this NFAD since the contents of that letter were not part of the complaint to the Association and thus the Association has not been given the opportunity to respond. The Complainants also believe that the Association was in violation of §55.1-1945<sup>2</sup> when it failed to provide them information they requested, including the license<sup>3</sup> number of the association.

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community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

<sup>2</sup> A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. 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 a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

<sup>3</sup> Associations do not have license numbers, they have registration numbers issued by the Common Interest Community Board.

The Association's final decision stated that the Association had filled out a form requested by the title company and had included the \$350 charge on that form. The Association also said that this charge was included on the seller's side of the settlement agreement, which was signed by the Complainants. The Association further stated that since the Complainants signed the settlement agreement with the charge in place, they agreed with the charge on that agreement. The Association considered the Complainant's request for reimbursement (for the difference between the \$350 charge and the \$146.71 charge they believed was appropriate) at multiple board meetings and denied the request each time.

The Association's position on the allegation that requested documents had not been provided was that they do not have "a requirement or procedure for developing a document/checklist regarding these inspections." The Association further stated that it "could not refuse to provide written information that it does not have." The Association did acknowledge that it did not provide the license number of the Association in as timely a manner as required.

The sale of the unit took place in June of 2020. At that time, a document entitled Maximum Allowable Preparation Fees, dated October 10, 2019 and issued by the Common Interest Community Board, was in effect. While §55.1-1992 of the Condominium Act provides precise information as to acceptable charges for resale certificates, the Consumer Price Index increases that must be applied every five years are not reflected in the statute but are included in the Maximum Allowable Preparation Fees documents. For this reason, I will reference and use the Maximum Allowable Preparation Fees (MAPF) document as part of this determination and will include it as an attachment.

Under §55.1-1992 of the Condominium Act, and as more fully outlined in the MAPF, an association can charge the seller for the preparation of a resale certificate. The fees that can be charged include fees for inspection of a unit, preparation and delivery of a resale certificate, and for other services outlined in the law. Under the Condominium Act, an association can charge no more than \$117.37 for the inspection of a unit and no more than \$176.05 for the preparation and delivery of a hard copy resale certificate or \$146.71 for an electronic version. I reached out to the Association to determine if an inspection had been done, and it confirmed that the unit had been inspected. Whether this inspection was authorized by the declaration, a requirement under the Condominium Act, cannot be determined by this office. The Complainants requested and received an electronic version of the resale certificate. The total maximum cost for the inspection of the unit and the preparation and delivery of the resale certificate (assuming the inspection is authorized under the declaration of the Association) is \$264.08. According to documentation provided to this office from the Association, an expedite fee of \$58.69 may have been charged, and a post-closing fee of \$58.69 may have been charged. In addition, a \$50 transfer fee was charged.

The post-closing fee should be charged to the purchaser and not the seller, per the statute, so that fee cannot apply. I did not see anything in the Complaint or the Association's final determination that led me to believe the Complainants had requested that the resale certificate be expedited. If the Association was asked to expedite the

resale certificate, the \$58.69 would apply. Transfer fees are not addressed in the Condominium Act and are not enumerated as one of the charges that can be made for a resale certificate. Whether the fee can be charged separately is outside the scope of this office's jurisdiction and dependent upon the condominium instruments.

By my calculations, the resale certificate should have cost either \$264.08 without an expedite fee, or \$322.77 if the Complainants asked that the resale certificate be expedited. As noted earlier, the fifty-dollar transfer fee does not fall under the Condominium Act, and therefore I cannot determine if the Complainants were required to pay that fee, nor can I determine how it fits into the charges and payments in this situation. While there does appear to be a discrepancy between what the Complainants paid for a resale certificate and what they should have paid, I cannot determine what the proper cost should have been as there is not enough information provided and there are distinctly differing views between the parties on this matter. Importantly, however, even if I could determine the proper cost down to the last penny, this office has no authority to require the Association, if it proved appropriate, to refund any monies to the Complainants. That is outside the purview of this office. Instead, legal action would be required to obtain such a refund.

As for the allegation that the Association was in violation of §55.1-1945 of the Condominium Act, I agree with the Association's position. If it does not have a document, it cannot provide the document upon request. There is no requirement under the Condominium Act that an association create a document if none exists. Since no further information was provided by either party about the failure to provide the "license" number of the association in a timely manner, I cannot determine if there was a violation of common interest community law.

The question as to whether the Complainants were bound by the \$350 charge once they signed the settlement agreement is not a question that falls under common interest community law. Instead, it is a civil law issue outside the scope of our authority.

#### Required Actions

No further 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  
Heritage Court Council of Co-Owners

## MAXIMUM ALLOWABLE PREPARATION FEES

### Condominium Resale Certificates for Condominium Unit Owners' Associations Includes Fees Updated January 16, 2018 & Law Changes Effective October 1, 2019

Virginia law requires that when reselling a unit in a condominium, the unit owner must provide a potential purchaser with certain legally required information regarding the condominium, common elements, and the unit owners' association. **The Virginia Condominium Act** calls the legally required information a **resale certificate**. The resale certificate must be requested by the seller, prepared by the condominium unit owners' association, and delivered to the potential purchaser.

Because compiling the required documents involves time, effort, and resources, the law allows the preparer to assess **reasonable fees**, but sets a maximum amount for such fees.

Condominium unit owners' associations may charge fees as established in § 55.1-1990 of the Condominium Act. (See adjacent table.)

To account for inflation, the law automatically adjusts the maximum fees applicable to unit owners' associations every five years, based on the U.S. Average Consumer Price Index (CPI). The General Assembly established the initial cap amounts in 2008. The current fees (**displayed in bold**) are effective as of January 16, 2018. The next mandatory CPI adjustment will occur in 2023.

**PREPARERS** of CONDOMINIUM RESALE CERTIFICATES are allowed to charge **no more than the following maximum fees** for *only* the following tasks:

**\$117.37** for **inspection** of the unit *if authorized in the declaration and as required to prepare* the resale certificate.

**\$176.05** for **preparation and delivery** of the resale certificate in **paper form (for no more than two copies)** OR **\$146.71 total** in **electronic form**. Only one fee shall be charged for preparation and delivery of the resale certificate.

**\$58.69** for an additional fee to **expedite** the inspection, preparation, and delivery of the resale certificate (if completed within five business days of the request)—but only if the preparer agrees to do so (*optional* at request of seller/agent).

**\$29.34** for an **additional hard copy** of the resale certificate (*optional* at request of seller/agent).

**Actual cost** for third-party commercial delivery service to **hand-deliver or overnight** the resale certificate (*optional* at request of seller/agent).

**\$58.69 post-closing fee** charged to the purchaser (*collected at settlement*) to update ownership records of the unit owners' association.

**\$58.69** for pre-settlement **updates** to the resale certificate (*collected at settlement*).

**\$117.37** for **additional inspection** of the unit *if authorized* by the declaration (*optional* at request of purchaser/agent).