



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

April 3, 2023

G. Bryan Slater  
Secretary of Labor

Demetrios J. Melis  
Director

Complainant: Kathy McNally  
Association: Captain's Cove Golf & Yacht Club  
File Number: 2023-02259

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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 December 5, 2022. The Association provided a response to the association complaint dated February 9, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 27, 2023 and received March 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.

This Determination is final and not subject to further review.

### Determination

The Complainant alleged that the Association violated §55.1-1815(E)<sup>1</sup> of the Property Owners’ Association Act when it failed to provide a cost schedule to the Complainant at the time she made her request for records. According to the Complainant, she was not provided a cost schedule until she was notified the document was ready to be picked up. The Complainant further noted that at the time of her request (November 17, 2022) the Association did not have a cost schedule in place and did not adopt one until November 30, 2022, one day prior to the day she could pick up the document she had requested.

The Association denied the Complainant’s request in her complaint that the document she requested be provided at no cost and stated that they had the right, under the Property Owners’ Association Act, to request fees prior to supplying the requested documents, not prior to the request.

While the Association is correct that it can impose charges prior to providing copies of books or records, it misses one important part of the applicable statute, which states that “Charges may be imposed only in accordance with a cost schedule...” and “[t]he cost schedule shall ... (iii) be provided to such requesting member at the time the request is made.” Meaning the Association can charge for reasonable costs of materials and labor

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<sup>1</sup> E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

prior to providing copies of books and records, but it can only do so in accordance with an adopted cost schedule provided to the requestor at the time the request is made.

The Complainant was not provided the cost schedule at the time of her request, and, it appears, the cost schedule did not even exist when she made her request. As such, there was no way for the Association to provide it. The Complainant should not have been charged for her record request, since the Association did not provide her the cost schedule at the time of her request, and, in fact, did not have a cost schedule in place until several weeks later.

#### Required Actions

No action is required of the Association.

Please contact me if you have questions.

Sincerely,

A handwritten signature in blue ink that reads "Heather S. Gillespie". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Captain's Cove Golf & Yacht Club