



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin
Governor

July 26, 2023

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: Charles Seland
Association: Warwick Crossing Condominium Unit Owners Association
File Number: 2023-03039

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 December 5, 2022. The Association provided a response to the association complaint dated May 18, 2023. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 7, 2023 and received June 16, 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.

If, within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities, we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant included nine distinct complaints in the complaint he submitted to his Association. Of those, Complaint #2 and #8 will not be considered since they do not pertain to common interest community law, which in this case is the Condominium Act. In addition, as is always the case, additional information provided with the Notice of Final Adverse Decision that was not part of the original association complaint will not be part of this determination since the Association was not provided an opportunity to respond.

In his first complaint, the Complainant alleged a violation of §55.1-1815 of the Property Owners Association Act and §55.1-1939¹ of the Condominium Act which essentially incorporates §55.1-1945² of the Condominium Act. The reference to the Property Owners' Association Act is inapplicable since this is a Condominium.

¹ Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55.1-1945, including records of all financial transactions;

² 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

The Complainant alleges that the Management Company has failed to provide a copy of the management agreement and contact information for the board of directors. The Complainant said that the Management Company believes its management agreement is a confidential document and does not have to be released. The Complainant also said that he was told by the Manager that board members are volunteers, and their addresses and phone numbers are not given out. While a copy of the written request for these documents was not included in the NFAD, the Complainant

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.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;
8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

stated that he wished to receive the names, home addresses, and email addresses of the board members.

The Association responded to this allegation by stating that the management agreement is proprietary and for competitive reasons the details are confidential. It provided a list of the names and addresses of the owners in the association and noted that it does not disclose phone numbers.

The Condominium Act, and specifically §55.1-1945 provides all owners in good standing the right to examine and copy the books and records of the association. The statute does contain a list of nine exceptions to this right. None of those exceptions, however, applies in this case. The owners have a right to examine and copy all records of the association and that would include the management agreement since it does not fall under any of the possible reasons for exclusion. The Association is not required to provide phone numbers or email addresses if that information is part of an individual owner's file. It is, however, required to provide an association membership list if requested by an owner in good standing.

In his third complaint, the Complainant alleges that the Association has failed to provide the 2021 Budget Summary Report, despite being asked directly for this information. The Complainant did not include a copy of his request for this information.

In response to this allegation, the Association provided copies of the income/expense statement for 2021, 2022, and YTD 2023, and 2021, 2022, and YTD 2023 balance sheets. The response from the Association appears to meet or exceed the document request from the Complainant.

The fourth complaint is related to the maintenance and repair of the common areas. While there is a general requirement under the Condominium Act that an association be responsible for maintenance of the common elements, that requirement is dependent upon the condominium instruments, which takes this issue outside the authority of this office or agency. As such, we cannot provide a determination on this matter.

In his fifth complaint, the Complainant alleges a violation of §55.1-1826 of the Property Owners' Association Act and stated that he had never seen a reserve study from the association, and that the Manager has stated there are landscaping deficiencies. The Complainant asks what has happened with the reserve contributions made over the past five years and why is it not being used to correct the landscaping deficiencies. The Complainant referenced a statute that applies to property owners' associations and not condominium associations. The correct reference would be §55.1-1965,³ which is the statute in the Condominium Act that outlines the reserve study

³ B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900;

requirements and is very similar to the statute in the Property Owners' Association Act referenced in the complaint.

The Association wrote that it had contracted for a reserve study, and it was completed August 2, 2021. It further noted that it is trying to maintain reserves in order to avoid special assessments and is working to build reserves to the recommended level. A copy of the reserve study was included.

It appears that the Association has a reserve study in place and that it is working toward building the reserves to the recommended amount. The statute does not require that an association adhere to the recommendations of a reserve study, only that it review the study annually and make any adjustments it deems necessary.

The sixth complaint stated that the Complainant rarely gets correspondence from the Association or the Management Company and that he finds this odd since he is provided regular updates on other properties that he owns. He also noted that other associations provide easy access to websites for payment, repair bills, notices, etc. The Complainant believes the Association should provide a community news update on at least a quarterly basis. No reference to a statutory violation was provided and there is no requirement under the Condominium Act that an association must provide a community news update.

The Association responded to this allegation by agreeing to implement a quarterly newsletter for unit owners. The newsletter will report board actions, issues being addressed, upgrades, proposed bylaw or rule changes and concerns of the board.

The seventh complaint references §55.1-1940,⁴ which, among other things, requires that bylaws be recorded with the declaration of a condominium association. However, there was no allegation related to this statute, and instead, the allegations made were related to the bylaws of the association and therefore fall outside the scope of our authority and no determination can be provided.

The final complaint, number nine, referenced the Rules and Regulations of the Association, but pertains to the association complaint procedure. Specifically, the Complainant alleges the Association and its Manager had failed to implement a proper association complaint procedure until October 2022 when he filed a complaint with this office and the Association was brought into compliance. The Complainant believes the Association should disseminate the complaint procedure to all unit owners and include it in the Rules and Regulations and distribute the Rules and Regulations.

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2. Review the results of that study at least annually to determine if reserves are sufficient; and
 3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

⁴ A. Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration. The unit owners' association may be incorporated.

The Association apologized for using an outdated complaint procedure and has sent the updated version to unit owners and will include it in the Rules and Regulations.

The Complainant did not allege a specific statutory or regulatory violation, but it is important that an association utilize a complaint procedure that fully complies with the applicable laws and regulations. There is no requirement, however, that it be included in the Rules and Regulations of an association. Instead, an association can choose how it wishes to incorporate a complaint procedure into its governing documents.

Required Actions

The Association appears to have responded to the bulk of the Complainant's concerns. However, it does need to provide a copy of the Management Agreement to the Complainant, since this document does not fall under any of the exceptions listed in the Condominium Act. The Management Agreement must be provided to the Complainant within two weeks of the date of this determination.

Please contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Warwick Crossing Condominium

Andleton Management Company