



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

April 18, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Mark Eackloff
Association: Fairfax Club Estates Home Owners Association
File Number: 2013-02385

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

Complainant submitted a complaint to the Fairfax Club Home Owners Association (Association) on November 19, 2012. The complaint submitted alleged that the Association had improperly assessed owners for what may be donations to a local Cub Scout troop, in violation of §55-509.3 of the Code of Virginia. The Association responded with a Final Determination dated February 22, 2013. The Notice of Final Adverse Decision (NFAD) was received by this office on February 28, 2013, but review was not begun until several deficiencies in the submission were corrected.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the NFAD in its entirety. Any additional information submitted by Complainant that was not part of the original Complaint submitted to the Association was reviewed but not utilized in the Ombudsman's determination.

Complainant alleges that the dues levied by the Association include an annual payment to a Cub Scout pack of \$600. Complainant does not believe that it is appropriate for the Association to make a donation of this nature. The Association responded by stating in its Final Determination that the Cub Scout pack provides a semi-annual service, cleaning up common areas of the Association. The Association further notes that this clean up enhances the cleanliness of the common area, increases intrinsic value the common area and enhances the ownership experience for owners and that the payment is a line item in the annual budget and the board has annually approved this budget item at least since 2001.

The NFAD raises several issues, not all of which are appropriate for review or determination by this office. The nature of the funds given to the Cub Scout pack is a key question. Whether they are a true donation to the pack or payment for services is a question that does not fall under the auspices of common interest community law or regulations. However, this question is integral to the determination as to whether the payment is proper under common interest community law or regulations.

In addition, regardless of whether the payment is appropriate under common interest community law, the governing documents of the association, and specifically the declaration, are the tipping point as to whether or not the association can make such payments. Both the Complainant and the Association have raised the issue of compliance or noncompliance with §55-509.3. This portion of the Property Owners' Association Act states "Except as expressly authorized in this chapter, *in the declaration* (emphasis added), or otherwise provided by law, no association may (1) make an assessment or impose a charge...unless the charge is a fee for services provided or related to the use of the common area..." Even if it could be determined that the payment was a donation and not a fee for services provided or related to the common area, the final deciding factor would be whether or not the declaration authorized such payment.

This office has no jurisdiction over the governing documents of any association and cannot make a Determination which requires review and interpretation of the governing documents. It is my position that the Determination requested by the submitted NFAD is not a Determination this office can provide. Deciding the true nature of funds paid to a Cub Scout pack is a matter more appropriate for a tax attorney or an accountant. Reviewing and interpreting the declaration to determine if the payment, in whatever form it may be considered (donation vs. fee for services provided) is not appropriate for this office which has no jurisdiction over the governing documents.

Based on the information provided in this NFAD, and the lack of authority and jurisdiction by the Common Interest Community Ombudsman over the governing documents of an association, no determination can be provided.

Required Actions

No action is required of either party. If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Fairfax Club Estates Home Owners Association