



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

March 8, 2016

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Famey Lockwood
Association: Courtlands at Cascades Condominium Association
File Number: 2016-01773

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 her complaint to the Association on November 1 and November 16, 2015. The Association provided a final determination to the Complainant dated January 5, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 21, 2016 and received on the same date.

Determination

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 §55-530(F) (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.

The Complainant has alleged that the Association violated §55-79.74:1 of the Condominium Act by failing to provide copies of requested books and records of the

association. The Complainant contends that the Association failed to respond to multiple requests for copies of financial statements. A portion of the financial statements were provided, but not all. These requests and responses occurred over several months.

The Complainant also alleged that the Association failed to respond to a request for a copy of corrected board meeting minutes. The request was made multiple times and the Complainant stated that the Association did not always respond to the requests or told her the corrections had not been made. The Complainant alleges that this is a violation of the bylaws of the Association.

The Complainant requested copies of minutes for the years 2007-2011. The Association responded by requesting a reason for the request, which was provided as "I'm an interested homeowner; the BOD meeting minutes provide information and direction from the Board." The Association provided some but not all the requested minutes, explaining that some were not available "as they were with another manager at that time."

The Complainant alleged that she had previously been provided electronic copies without charge but was now being charged for copies. The Complainant acknowledged the Association Policy Resolution that outlines charges for copies of documents, but believes that those charges were only intended for physical copies of documents and not electronic copies. The Complainant believes that charges for electronic copies are improper under the Association's Policy Resolution 2012-01.

In its Decision, the Association stated that the Manager of the Association advised the Board that the Complainant refused to follow §55-79.74:1 of the Condominium Act, that the requests became too numerous, and that the Association "no longer has any of its records that were made prior to 2010."

The language of common interest community law, and in this case, the Condominium Act, makes it very clear that access to the books and records of an association is a right that virtually all owners in good standing hold. The Condominium Act states, under §55-79.74:1 states

A. The declarant, the managing agent, the unit owners' association, or the 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 D, 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, but not limited to, the unit owners' association membership list, 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. (emphasis added)

The Association has an obligation to provide access to the books and records of an association or to provide copies of documents if so requested, as long as the request complies with the Condominium Act. The request must be in writing, it must reasonably identify the purpose for the request, and must be specific as to what books and records are being requested. If an owner is in good standing and meets these requirements, access to, or copies of, the requested books and records should be provided, unless the requested documents fall under one of the exceptions set forth in §55-79.74:1 (C)(1-9).

The Complainant did not appear to provide a purpose in her requests for copies of the books and records, but was specific about the books and documents she was seeking in her requests. All requests were in writing. When asked by the Association for her reason for requesting copies of the books and records, the Complainant responded "I'm an interested homeowner; the BOD meeting minutes provide information and direction from the Board." It is not clear to me if the Complainant's response is sufficient to meet the requirements of providing a purpose for her request. This would appear to be a technicality of language – being an interested owner is not a purpose, although it could be a reason for the request and thus responsive to the inquiry from the Association. Other than what may have been a failure to provide a purpose, I found no other failure to comply with the provisions contained in §55-79.41:1. In an effort to ensure that all requirements of the law are met, by both the Association and the Complainant, I would suggest that the Complainant again request the documents she was denied, and that she ensure that she has provided a purpose for her request.

The complaint related to the corrected minutes is not one over which we have any jurisdiction as the Complainant states in her complaint that it is related to a violation of the bylaws of the Association. The Complainant did not allege that common interest community law or regulations had been violated.

The Association's response to the Complainant's request for copies of minutes from 2007-2011 is disturbing. The Association has stated that it does not have copies of these records, and that they were with another manager. Those records belong to the Association and should be part of the records of the Association. I am hopeful that the Association is doing everything it can to obtain those records. However, if the Association

truly does not have the records, it cannot provide copies of them and is therefore not in violation of the applicable provision of the Condominium Act.

Finally, the Complainant's argument that the Association has not charged her in the past for records and that they are in violation of their own policy resolution is not a matter that can be determined by this office as the Complainant is alleging a violation of the governing documents and not common interest community law or regulations. Under the Condominium Act, the Association can charge for copies of documents under §55-79.74:1 which states "[p]rior to providing copies of any books and records, the unit owners' association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof."

Required Actions

The Association must ensure that it provides a prompt, complete response to any properly submitted request for access to the books and records of the association, or to any request for copies of such records. In the event that the Complainant resubmits her requests and provides a proper purpose, the Association must comply with the Condominium Act. The argument that an owner has submitted too many requests is not a valid argument for failing to provide documents under the Condominium Act.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Courtlands at Cascades Condominium Association