



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

December 11, 2018

Brian Ball
Secretary of
Commerce and Trade

Complainant: Elizabeth Zeien
Association: Green Run Homes Association
File Number: 2019-01345

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 September 16, 2018. The Association provided a response to the Complainant dated October 24, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 2, 2018 and received November 6, 2018.

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 requested a copy the association's disclosure packet pursuant to §55-509.5¹ and was told by the Association that there would be a charge of \$264.08 for a disclosure packet. The Complainant considers this amount to be a financial hardship and believes the Association should provide a copy of the packet through the company that provides disclosure packets upon request. The Complainant further alleged that the Association lied about possible pending litigation and has failed to include such information in disclosure packets.

The Association responded to the Complaint by noting that a disclosure packet shall be provided to a seller, after such packet has been requested. The Association also stated that the disclosure packet is not a business record and if the Association did maintain separate disclosure packets, they would be lot specific and therefore part of an individual owner's file and subject to exclusion from examination or copying pursuant to 55-

¹ A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;
2. A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;
3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;
4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;
5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;
7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;
8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;
9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;
10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;
11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;
12. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;
13. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
14. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;
15. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;
16. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350;
17. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing; and
18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

510(C)(9)². The Association wrote that it was not able to respond to the request for a disclosure packet since no disclosure packets are kept as part of the books and records of the Association.

The Association also addressed the cost for providing the documents requested and noted that the costs were valid under the applicable law for a disclosure packet. Finally, the Association wrote that the allegations about litigation were false and that the Association has followed the law regarding the disclosure packets as they pertain to litigation.

No evidence was provided to support the allegations that the Association failed to disclose pending litigation in disclosure packets and therefore no determination can be provided as to whether there had been a violation of the disclosure packet provisions. The Association appears to have a valid reason for not providing a copy of a disclosure packet to the Complainant, since it does not maintain a generic disclosure packet as part of its books and records, each packet is individual to the lot it references and a disclosure packet is provided to *sellers* upon request. The proposed cost for the acquisition of a disclosure packet is based on the Property Owners' Association Act and the Maximum Allowable Fees for Disclosure Packets (as requested by a seller or his agent) as updated by the Common Interest Community Board and effective January 16, 2018. There are no provisions in the Property Owners Association Act regarding fee waivers for financial hardship, so it would be up to an association to determine if they wish to provide any type of waiver.

Required Actions

No 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
Green Run Homes Association

² C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

9. Individual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.