



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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October 31, 2024

Complainant: Daniel Zavadil
Association: Worldgate Condominium Unit Owners' Association
File Number: 2025-00853

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on October 3, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Daniel Zavadil ("Complainant"). The Complainant initially submitted a complaint to the Worldgate Condominium Unit Owners' Association, Board of Directors ("Board") on September 9, 2024, and the Board issued a notice of final decision on September 25, 2024, on the complaint. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues to be Decided

In the Complaint, the Complainant raises one issue: (1) Whether the Board's decision to charge fees to provide the Association records violates applicable law. As explained below, this Office concludes that the Board's action is not in violation of the Common Interest Community law.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

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 Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

The issue presented in this matter is whether the association’s imposition of fees to provide certain association records violates applicable common interest community laws. As explained more fully below, the Office has determined, upon review of the materials submitted with the NFAD and the applicable statutes, that the Board’s action to require fees to provide requested records did not violate the Common Interest Community law.

The Complainant alleges that he made a proper request for two years’ worth of Condo and Board minutes. Specifically, the Complainant requested the Association Unit Owners’ Board Meeting Minutes from the years 1997 and 1998; and the Association Board of Directors’ Meeting Minutes for the years of 1997 and 1998. The Complainant states that upon request, he was informed that he needed to pay \$75 per hour for the management company staff member’s time that amounted to 40 hours to sieve through 40 boxes of files that are more than 25 years old. The Complainant argues that the cost was outrageous and that if the Board had been maintaining its books and records in a proper manner, the records would have been easily accessible. The Complainant asserts that based on his previous request, the Board provided him records from 1994, 1995 and 1996 without charge. The Complainant also argues that unit owners like himself are already paying monthly assessments and should not be required to pay additional fees to access the books and records the Association has an obligation to keep. The Complainant further argues that the decision to impose fees as a condition to access to the Association record is contrary to the

requirements, spirit, and intent of the applicable law since such fees would discourage homeowners from exercising their rights to access the books and records of the association.

In its response, the Board states that its action to impose charges does not violate applicable law. It points out that the Virginia Condominium Act permits charges to be imposed on an owner who requests books and records of the association, and that the Act does not exempt any owner from the charges simply because the documents requested are more than 29 years old and should have been scanned into a computer and made accessible.

The Common Interest Community law at issue is Virginia Condominium Act, Va. Code §55.1-1945. It gives unit owners the right to examine and copy all the books and records of the association with some exemptions and exceptions. Va. Code §55.1-1945. It states in pertinent parts:

The declarant, managing agent, unit owners' association, or 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 E, 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. 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 related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation.

Va. Code §55.1-1945(A)(B).

In this case, the Complainant requested minutes of meetings, which fall under the Act; the Board seems to possess the requested records, and the Complainant seems to be in good standing and has a proper purpose for the request. The only matter at issue is whether the Board should charge the \$3,000.00 to provide Condo and Board of Directors Meeting Minutes from 1997 and 1998. Subsection (E) of Va. Code § 55.1-1945 permits an association to impose fees for its reasonable costs. It states:

Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made. Va. Code §55.1-1945(E).

In this case, The Board has a cost schedule that was provided to the Complainant, which specified the charges for materials and labor, and it seems to apply equally to all unit owners in good standing. The Association cost schedule indicates charges for costs and labor to provide copies as follow:

- a. \$49.68 per hour if done in house by Community Manager;
- b. \$24.92 per hour if done in house by Administrative Staff;
- c. \$300 per hour if done at the Managing Agent's Corporate Office by its Principals;
- d. \$120 per hour if done at the Managing Agent's Corporate office by any of its Community Managers;
- e. \$75 per hour if done at the Managing Agent's Corporate Office by its Clerical Staff; and
- f. At Cost if by Vendor.


While charging \$75 per hour for job done by a clerical staff of the Association Management Company may seem exorbitant, this Office cannot conclude that it is unreasonable, especially given the fact that the Board did not opt for the highest amount of \$300 per hour or the higher amount of \$120 per hour on the costs schedule. Besides, the amounts do not seem to have changed in the past six years since the cost schedule became effective (October 3, 2018). Furthermore, 40 hours to complete or provide the requested records may seem a tad too much, however, this Office cannot conclude that the Board's action is contrary to the applicable law given the fact that the request is for both the Association Board and Board of Directors' Minutes of the Meetings for 1997 and 1998. There is no evidence before this Office as to where the documents or records are located, the amount of time needed to find the records, and the amount of time needed to obtain the records.

The Complainant argues that if the Board had been diligent in properly maintaining, storing, and archiving its records and minutes, there would not have been a need for charging so much. While this Office agrees with the Complainant, it cannot find that the Board's action is in contravention to the Condominium Act since the Act does not specify the requirements for keeping, storing, or archiving association books, records, and minutes.

The Complainant points out that he requested and was provided with the records from 1994, 1995 and 1996 without charge, and thus, should not be charged for his current request. While consistency in the application of fees may be a best practice, the Office cannot conclude that since the Board provided the 1994, 1995 and 1996 records free of charge in the past, the Board is now obligated to do so in this case; especially given the fact that the statutory language clearly provides that an association may charge such fees. Moreover, associations have the ability to change their practices based on experiences and issues they face, so long as those changes in practice remain in compliance with applicable laws and regulations. The key point we would stress to all parties is that the applicable statute allows reasonable costs incurred in accordance with the association's fee schedule. We would further encourage associations to use the least costly options to satisfy records requests in the spirit of cooperation with its association members and in good governance of the association.

Conclusion

Based upon the information in the record, including the original complaint, its accompanying documents, and the NFAD, this Office finds that the Board's action to impose fees to provide the Association record is not contrary to the applicable law. If any party is dissatisfied with this determination, or part thereof, the party may wish to seek remedies in civil court.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Worldgate Condominium Unit Owners' Association