



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

April 3, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Thomas Giddings and Stephanie Van Praet
Association: Ashley Court Cluster Association
File Number: 2015-02259

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 Association dated February 10, 2015. The Association provided a final determination dated February 19, 2015. The Complainant submitted the Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 6, 2015 and received March 10, 2015.

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 has no authority to paint individually owned homes in the Cluster, or to assess for such painting. The specific

allegations are that the Association has violated §55-509.3 and §55-514(A) of the Code of Virginia. The Complainant's argument hinges primarily on the governing documents of both the Cluster Association, and its Master Association as the provisions of the Code that are referenced in the Complaint refer specifically to the declaration and/or other governing documents of an association.

The Association responded to the allegations by providing a copy of a letter drafted by the Association's attorney and opining that "the Association does have the authority to undertake the exterior painting of the Units within the Association, and to include the costs of such work to the Members as part of their assessments." The attorney's argument is based on the Deed of Amendment to the Deed of Dedication of the Master Association, as opposed to the Declaration of the subsidiary Association.

While the Complainant has included allegations in the Complaint concerning "a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations," both of the statutes (§55-509.3 and §55-514) require, in this instance, review and interpretation of the governing documents of the Association, in order to determine if there has been a violation of common interest community law or regulations.

While this office provides determinations for NFADs that contain complaints alleging a violation of common interest community law or regulations, this office cannot interpret the governing documents of an association. In the case at hand, the question is less one of whether the Association violated common interest community law or regulations, and more a matter of whether the Association has the power or authority to paint the exteriors of the homes in the association and assess the owners for such painting. In order to provide a determination in the present case, a thorough review and interpretation of the governing documents of the Association is essential. However, because this office cannot provide interpretations of the governing documents, the Complainant will have to pursue some other means of determining if there has been a violation of common interest community law or regulations. Because we cannot review and interpret the governing documents of this or any association, no Determination can be provided for this NFAD.

Required Actions

While this office cannot address whether or not there has been a violation of common interest community law or regulations relative to the Complaint that was submitted to the Association, there are several other issues that do need to be addressed by the Association. It does not appear that consideration was provided for the submitted Complaint. Associations are required to provide consideration of all association complaints, and in doing so, must provide the time, date, and location of such consideration to the complainant.

The final determination provided by the Association did not meet the requirements of the Common Interest Community Ombudsman Regulations, which require that the registration number of the association be included in the final determination, as well as the

complainant's right to submit a Notice of Final Adverse Decision to this office, along with the appropriate contact information for this office. I do not know if the association is professionally managed, but if it is, the manager's name and license number must also be included.

In reviewing the Association's Complaint Procedure, it appears that it does not fully comply with the Common Interest Community Ombudsman Regulations. There is no information as to how the complaint is to be delivered to the association. There is no information as to what, if any, specific documentation must be included. There is also no information regarding how the association will request additional information if needed, and, if such information is requested, what timeframe will be given to the complainant in order to provide the requested information. There was also no mention of an appeal process, which is not a required process but complainants must be given notice in the complaint procedure as to whether there is or is not an appeal process available. .

I ask the association to thoroughly review the Common Interest Community Ombudsman Regulations and draft a new complaint procedure that fully complies with those Regulations. The Regulations can be found on our website at www.dpor.virginia.gov/cic-ombudsman. I will provide 30 days from the date of this Determination for the Association to draft a new complaint procedure and provide my office a copy of that complaint procedure. I will expect to receive the complaint procedure no later than **Monday, May 4, 2015**. In addition, once a new and correct complaint procedure has been adopted by the association, it must ensure that it adheres to the complaint procedure as well as all common interest community laws and regulations related to the complaint procedure. Any failure to comply with these laws and regulations may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

The Association is welcome to contact this office if it has any questions regarding the required actions outlined above. We will be happy to assist the Association in its efforts to create and adopt an association complaint procedure that fully complies with common interest community laws and regulations.

Sincerely,


Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Ashley Court Cluster Association