



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

May 18, 2018

Ralph S. Northam
Governor

Esther Lee
Secretary of
Commerce and Trade

Complainant: Morris and Betty Brinkley
Association: Remington Park Condominium Association, Inc.
File Number: 2018-02871

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 April 3, 2017. The Association provided a response to the Complainant April 5, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 3, 2018 and received May 7, 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 appeared to allege three violations in the Complaint submitted to the Association. Two of the violations are not appropriate for review by this office as they were related to what appeared to be two different Declarations. The third Complaint referenced §55-344 of the Code of Virginia, but no specific violation was outlined. The Complainant also referenced §55-515.2 of the Code of Virginia in the body of the Complaint. Neither of these statutes is appropriate for this Complaint. This association is a condominium unit owners association and therefore would fall under the Condominium Act. The Code sections referenced by the Complainant are provisions from the Virginia Subdivided Land Sales Act and the Property Owners' Association Act and thus not applicable.

The Notice of Final Adverse Decision included a lengthy narrative with pictures and alleged violations of the Condominium Act. This office has confirmed that the narrative was not part of the original complaint to the association and therefore it cannot be considered as part of the Notice of Final Adverse Decision since the Association was never provided the opportunity to respond to any of the allegations contained in the narrative.

Because the statutory violations alleged in the Complaint to the Association were not applicable to the condominium, and because any allegations of the Condominium Act were contained in a document that was never included in the original complaint, this office cannot provide a Determination on this Notice of Final Adverse Decision.

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
Remington Park Condominium Association, Inc.