



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

April 17, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Michael Johnson
Association: Oak Tree Home Owners' Association
File Number: 2013-02610

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 December 1, 2012. The Association provided a Final Determination to Complainant dated February 25, 2013. The initial response was delayed because a new board of directors was put in place in the interim. This office received the Notice of Final Adverse Decision (NFAD) on March 25, 2013.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the (NFAD) in its entirety. The Complaint submitted to the Association was based solely on the Declaration of the Association and pertained to maintenance and repairs of garage lintels. This office has no jurisdiction over matters related to the governing documents of an association. As the Common Interest Community Ombudsman Regulations make clear, a review of the NFAD is to determine if the "final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board (Common Interest Community Board)..." (18 VAC 48-70-120). If the matter submitted for consideration is not related to a possible violation of the laws and regulations governing common interest communities, this office has no authority to review or make a determination regarding such matters.

Because this office has no jurisdiction over the matters outlined in the Complaint submitted to the Association, the OCICO cannot find a violation of any law or regulation governing common interest communities.

Required Actions

While no violation has been found in relation to the subject matter of the Complaint, it appears that the Association has not provided information to the Complainant related to the jurisdiction of this office. Nowhere in the Complaint Form is there language that describes the types of complaints appropriate for submission through the internal complaint process contemplated by the Regulations. In addition, the Association, through its manager, responded as if the submitted Complaint was appropriate for the complaint process, thus leading the Complainant to believe that an "appeal" through the Office of the Common Interest Community Ombudsman was the next logical step, even though this office has no jurisdiction over matters that are not related to violations of common interest community laws or regulations. I strongly suggest that the association review its complaint form and complaint procedure and make certain that it has provided sufficient clarification of the types of complaints appropriate for submission through the internal complaint process.

If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Oak Tree Townhomes Homeowners' Association