



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

March 12, 2014

Complainant: Frederick and Bonnie Farley
Association: Osprey Villas Condominium Association
File Number: 2014-02412

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 September 13, 2013. The Association provided a Final Determination Letter to the Complainant dated January 13, 2014. The Notice of Final Determination (NFAD) was received by this Office on February 12, 2014.

Determination

The Complainant submitted a complaint regarding the Association's use of the common elements to provide a reasonable accommodation to an owner in the association. The Complainant believed that using a portion of the common elements to provide a reasonable accommodation to a unit owner was not an appropriate use of the common element and that the accommodation could have been provided in some other form that would not have involved common elements. The Complainant did not make any reference to the Condominium Act or Condominium Regulations and nothing in the Complaint indicated a violation of the Condominium Act or Condominium Regulations.

Any Notice of Final Adverse Decision filed with the Office of the Common Interest Community Ombudsman (OCICO) must comply with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations. In order to meet the requirements of common interest community law and regulations, all Notices of Final Adverse Decision must evolve from an original complaint submitted through an association complaint procedure or process. The complaint must be submitted in accordance with the

association complaint procedure and, as very specifically set forth in the Common Interest Community Ombudsman 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 Common Interest Community Ombudsman Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not pertain to common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and is not a complaint that should ever be the subject of a Notice of Final Adverse Decision. In the event that such a complaint is submitted to this office as part of a Notice of Final Adverse Decision, no determination can be provided.

Because the allegations contained in the original complaint pertain only to a possible violation of the condominium instruments, and no specific violation of common interest community law or regulations has been alleged, the Complaint submitted to the Association was not appropriate for the Complaint Process. Because the Complaint was not appropriate for the association complaint procedure, the subsequent NFAD is not one for which a Determination can be provided by this office and the file will be closed with no further action.

Required Actions

Upon my review of the Association's Complaint Procedure, I found that the Complaint Procedure encompassed not only violations of common interest community law and regulations, but violations of the condominium instruments as well. While the Association can include such violations in its Complaint Procedure, it may be confusing to owners as violations of the condominium instruments are not appropriate topics for Notices of Final Adverse Decision. The Association may wish to have a separate process for violations of the condominium instruments, or explain in its Complaint Procedure that only violations of common interest community law or regulations are appropriate for submission to this office as a Notice of Final Adverse Decision.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Osprey Villas Condominium Association