



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

February 19, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Patrick and Peggy McCreery
Association: Sussex Square Services, Inc.
File Number: 2016-01868

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 October 26, 2015. The Association provided a final determination to the Complainant dated January 13, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 19, 2016 and received January 26, 2016.

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 failed to provide proper maintenance of the Association's sidewalks, and in particular the sidewalks near his home, despite repeated follow up by the Complainant. No allegation of a specific violation of common interest community law or regulation was made in the Complaint.

As stated in the opening to this Determination, a complaint must concern "a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations." In the present case, the Complainant has not provided information regarding what applicable laws or regulations create the basis for the submitted Complaint.

While there is a provision under the Condominium Act (§55-79.79) that pertains to the responsibility of an association to maintain the common elements, there is no clear language as to what level of maintenance that provision requires. As such, even if the Complainant had provided a reference to the Condominium Act, the language contained in that particular provision is not something that would fall under our authority or jurisdiction since we have no way of deciding if an association is providing a proper level of maintenance or repairs.

Because no allegation of a specific violation of common interest community law or regulations was made in the Complaint, this office cannot provide a Determination.

Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Sussex Square Services, Inc.