



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

October 31, 2019

Brian Ball
Secretary of
Commerce and Trade

Mary Broz-Vaughan
Director

Complainant: Yanyi Yuan
Association: Linden Square Homes Association
File Number: 2020-01055

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 June 29, 2019. The Association provided a response to the Complainant dated September 25, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 5, 2019 and received October 9, 2019.

Determination

The Complainant has alleged two complaints in his submission through the association complaint procedure. The first complaint alleged that the Association had been doing "subjective 'visual inspection'" and that it discriminated against certain homeowners. The complainant stated that he believed that the Association had committed a covenant violation. This complaint centered on architectural violations that had not been raised when the Complainant purchased his home five years ago, but the Association did notify him of violations two years ago. The Complainant addressed the violations by hiring a professional painter and believed the issue had been resolved. Two years later when listing the property for sale, the Complainant received another violation letter for the same issue.

The second complaint was related to the Association Complaint Procedure and the Association's "Procedure for Responding to Requests for Examination and Copying of the Association's Records." The Complainant stated that neither of these documents has been updated since 2012 and that they contain the incorrect property management company and incorrect contact information and submission information.

The Complainant has requested payment by the Association of his costs for hiring a contractor to complete work twice on his home so that he could sell it, and the cost of sending his complaint to the wrong address via certified mail.

The Association responded to the complaints by outlining the process used for consideration of the complaints and stating that the Board of Directors ultimately dismissed the complaints.

The Complainant's NFAD included a cover letter that referenced several statutes he believed the Association had violated, but these references were not included in the initial complaints sent to the Association and therefore cannot be considered as part of this Notice of Final Adverse Decision. No statutes were referenced in the complaint submitted to the Association.

Issues related to architectural guidelines do not fall under the jurisdiction of this office as those guidelines are part of an association's governing documents. There was no allegation of a violation of common interest community law contained in the architectural guidelines complaint, and therefore this office cannot provide a determination on this matter. The complaint related to the failure to update the association complaint procedure and records procedure with the proper address and information for the manager can be partially addressed by this office. We cannot review and advise regarding the records procedure since that constitutes a portion of an association's governing documents. However, the Association does need to ensure that it abides by the Common Interest Community Ombudsman Regulations which require that "[t]he association complaint procedure shall include the process by which complaints shall be delivered to the association." (18 VAC 48-70-50) The complaint form utilized by the Association provides for mailing of the form, but by providing an incorrect address, the Association does not appear to be providing the entire process by which complaints are to be delivered to the Association.

It does appear that the Association failed to update the address for the association complaint procedure, thus not meeting the requirement that it provide the process for delivery of complaints. Based on the documents provided, the complaint procedure had the prior management company's address as of May 21, 2019.

Required Actions

If the Association has not done so already, it must update the address in its complaint procedure immediately so that any future complaints can be submitted to the proper address.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Linden Square Homes Association