



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Mary Broz-Vaughan
Director

June 5, 2020

Complainant: Juan Pimental
Association: Whisperhill Cluster Association
File Number: 2020-02642

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 May 6, 2020. The Association provided a response to the Complainant dated May 12, 2020. The Complainant subsequently submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 17, 2020 and received May 18, 2020.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant alleged a violation of §55.1-1800¹ of the Property Owners' Association Act. The allegation was related to a broken water pipe that ran from a water meter to the Complainant's home. The Complainant believes that the water pipe is located on common area and that the Association has failed to properly maintain that common area and repair the pipe. The Complainant hired a contractor to fix the pipe and has asked the Association to reimburse him for the expense.

The Association responded to the Complaint by stating that the water pipe "does not constitute a 'Common Area' under section 55.1-1800..." The rationale behind the Association's position, according to its response is that the water pipe is not owned by the Association but is, instead, owned by the locality. Therefore, because the Association does not own or lease the water pipe and is not required by the declaration to maintain it, the Association does not believe that it has an obligation to repair or maintain the water pipe, nor does it believe it is obligated to reimburse the Complainant for his costs to fix the water pipe.

It is unfortunate that the Complainant had to pay for a repair that may not be his responsibility and is now finding it difficult to obtain reimbursement for his expenses. However, this office does not have the authority to determine whether the water pipe is part of the common area and whether the Association is obligated to pay for the repairs. Determining whether the water pipe is part of the common area, or should be considered a capital component, are legal issues that would require legal review and interpretation of the governing documents of the Association. Such a review is not within the purview of this office. As such, I cannot find that the Association has violated common interest community law since this office cannot determine whether the water pipe is part of the common area or considered a capital component.

Required Actions

No action is required of the Association as it pertains to the water pipe issue. However, the Association did not fully adhere to the Common Interest Community Ombudsman Regulations when drafting its response to the Complaint. Future final decisions must include the Complainant's right to file a Notice of Final Adverse Decision as well as the contact information for doing so, as required by the Common Interest Community Ombudsman Regulations (18 VAC 40-70-50 (10)²). In addition, the Association's registration number must be included as well as the common interest community manager's name and license number (18 VAC 40-70-50 (10)³).

¹ "Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

² 10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

³ 9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the

Please feel free to contact me if you have questions.

Sincerely,

Heather Gillespie

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Whisperhill Cluster Association

registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.
