



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

February 19, 2013

Complainant: Deborah Clay-Mendez
Association: Huntington Forest Homeowners' Association, Inc.
File Number: 2013-02137

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 Huntington Forest Homeowners' Association (Association) on December 1, 2012. The complaint submitted alleged that the Association had incorrectly calculated the annual assessment and that as a result the Association was in violation of §55-509.3 of the Property Owners Association Act (POAA).

Determination

The Office of the Common Interest Ombudsman has reviewed the Notice of Final Adverse Decision. The allegations in the complaint are that the Association has violated a provision contained in the Association's Declaration of Covenants, Conditions and Restrictions (Declaration). The Office of the Common Interest Community Ombudsman (OCICO) has no jurisdiction over the governing documents of any association, and a declaration is considered a governing document. The Common Interest Community Ombudsman Regulations (Regulations) specifically state an association complaint "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations." The complaint here is that there has been a violation of the Declaration. The Association's Declaration is neither a law nor a regulation and therefore is not appropriate for consideration under the Complaint Process required by the Regulations. No determination as to the appropriateness of the assessment will be provided.

~~The OCICO does not find that there has been a violation of §55-509.3. No information or evidence has been offered to suggest that the assessments are being used for a purpose other than for "services provided or related to use of the common area," both of which are allowable and appropriate under the POAA. In fact, the Association~~

specifically laid out its reasons for the increase in assessments in a missive that appears to be dated 1/11/2009, and the association states that the need for increased assessments is to pay for legal counsel (services), common area insurance (use of common area), and common area maintenance (use of common area). According to the documents provided in the Notice of Final Determination, it appears the association is in compliance with §55-509.3.

Required Actions

No action is required of either party. 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,

A handwritten signature in cursive script, appearing to read "Heather S. Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Huntington Forest Homeowners' Association, Inc.