



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

May 31, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Martha Sowers
Association: Ridgewood Farm Condominium Unit Owners Association
File Number: 2017-02770

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 an undated complaint to the Association. The Association provided a response to the Complainant on April 25, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 10, 2017 and received May 15, 2017.

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 alleged in her Complaint that the Association did not allow for a vote by the owners prior to a special assessment. The assessment was to pay for the painting of the condominium. In support of her allegations, the Complainant wrote that House Bill 2100 “establishes strict limits on the ability of a community association to charge fees or impose assessments other than those which are expressly provided for in the declaration...” In addition, the Complainant provided a portion of the Association’s bylaws where a provision was highlighted that required a vote by the owners for any additions, alterations, or improvements in excess of \$1,000.

The Association responded by stating in its letter that the painting cost, which was the reason for the assessment, was a normal maintenance expense and not an addition, alteration or improvement to the property and therefore does not require a vote of the owners under the bylaws.

The Complainant has alleged a violation of a House Bill rather than an actual portion of the Condominium Act, although this bill was ultimately passed and formed the basis for several new sections of common interest community law as well as amendments to existing sections. In this instance, the applicable Condominium Section resulting from House Bill 2100 is §55-79.49:1¹. However, that provision is not the keystone of this issue, instead it is the contents of the bylaws and whether there was a requirement in those bylaws for the association to obtain owner approval before implementing an assessment to pay for the painting of the condominium.

The only way to provide a Determination on this matter would be for this office to review and interpret the bylaws of the Association and we do not have the authority to do so. As such, I do not find that the Association has violated common interest community law or regulations.

Required Actions

No action is required of either party.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Ridgewood Farm Condominium Unit Owners Association

¹Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55-79.97:1.