



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

June 13, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Stoddart
Association: Arlington Oaks, A Condominium
File Number: 2017-02909

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 July 21, 2016. The Association provided a final determination to the Complainant dated May 8, 2017 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 25, 2017 and received May 30, 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 has alleged that the Association has reduced the enjoyment of his unit by erecting a wall of electrical meters outside his dining room window. The Complainant believes that the Association has violated §55-79.83¹ of the Condominium Act, which pertains to common expenses and late fees. Specifically, the Complainant contends that “all the expenses for the renovation and replacement of the electrical meters...must be assess against each unit...but I am bearing all of this burden alone.” The Complainant acknowledged that no monetary assessment was made but argued instead that non-monetary damage, in the form of an eyesore, resulted from the electric meters and the loss in resale value of the unit.

The Association responded by describing its plan to lower the posts on the meter bank and to screen the meter bank with landscaping. The Association acknowledged that this was not an acceptable solution according to the Complainant but that it (the Association) believed it was a reasonable solution since the location of the meters was determined by Dominion Power and Arlington County and not the Association itself.

I can find no violation of §55-79.83 in the Notice of Final Adverse Decision. The Complainant’s argument that he has a potential loss of value of his unit does not fall under the stipulated provision of the Condominium Act as that statute pertains only to actual assessments and not perceived losses of value.

Required Actions

You are welcome to contact me if you have any questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Arlington Oaks, A Condominium

¹ Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.