



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: John J. Larkin, II
Association: Montclair Property Owners' Association
File Number: 2016-01264

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 his complaint to the Association on September 21, 2015. The Association provided a final determination to the Complainant dated October 16, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 12, 2015 and received November 16, 2015.

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, on two occasions, improperly amended the Association declaration. Specifically, the Complainant stated that §55-515.1 of the Property Owners' Association Act was violated when the Association used a vote of two-thirds of the members present at two different annual meetings, rather than two-thirds of the votes of the membership at large, to amend the declaration.

In its response to the complaint, the Association noted that the language in §55-515.1(D) is permissive in nature and not a mandate, noting that the statute states

[a] declaration may be amended by a two-thirds vote of the owners. This subsection may be applied to an association subject to a declaration recorded prior to July 1, 1999, if the declaration is silent on how it may be amended or upon the amendment of that declaration in accordance with its requirements.

The Association also stated that the declaration of the Association was recorded in 1990 and that it contains specific language as to how amendments may be made. Thus, the declaration is not silent on how it may be amended and it was recorded prior to July 1, 1999.

Ultimately, the question as to whether the declaration was properly or improperly amended is a determination that is outside the scope of this office since any such determination would require a review and interpretation of the declaration. This office cannot review the declaration to determine exactly what language it contains in relation to amendment provisions nor can this office interpret the declaration. Such interpretation is a civil matter and outside our jurisdiction.

Required Actions

No action is required of the Association.

Both the Complainant and the Association are welcome to contact me if they have any questions regarding this Determination or the requirements that have been set forth.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Montclair Property Owners' Association