



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

February 10, 2016

Maurice Jones
Secretary of
Commerce and Trade

Complainant: Christie Blackmon
Association: Rollingwood Condominium Unit Owners' Association, Inc.
File Number: 2016-01582

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 her complaint to the Association on September 15, 2015. The Association provided a final determination to the Complainant dated December 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 22, 2015 and received December 23, 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 several violations of the Condominium Act. Specifically, she has alleged that the Association violated §55-79.57 and §55-79.41 of the Condominium Act by requiring owners to carry out annual maintenance and cleaning of HVAC systems, dryer vents and chimney flues. The Complainant has also alleged a violation of §55-79.77 of the Condominium Act, stating that “a quorum has to be present for a resolution to be voted on and passed.” She alleges that a quorum was not present at the meeting where the resolution was passed that would require the annual maintenance. Additional allegations were included in the Complaint to the Association, but did not pertain to violations of the Condominium Act (common interest community law) and therefore will not be summarized or addressed here.

In its final determination, the Association stated that the resolution was “adopted pursuant to Article VIII of the Association’s Bylaws.” The Association further stated that Article VIII “empowers the Board to adopt and enforce rules and regulations necessary for the benefit and enjoyment of the Condominium.” Prior to the final determination, the Association’s attorney responded to the Complainant’s concerns by letter, and explained that the Association’s Declaration requires owners to “maintain all portions of their units, including the HVAC units, appliances, chutes, flues, ducts and other apparatus.” Counsel also noted that the resolution was passed pursuant to the Bylaws, which empower “the Board to adopt and enforce rules and regulations necessary for the benefit and enjoyment of the Condominium.”

§55-79.41 defines terms as they are to be used in the Condominium Act. The Complainant has not explained in her Complaint how she believes the Association is violating the Definitions provisions contained in the Condominium Act. She does reference definitions of association, unit owner and unit in her Complaint, but association is not defined in the Condominium Act. Unit is defined as “a portion of the condominium designed and intended for individual ownership and use,” and unit owner is defined as “one or more persons who own a condominium unit...” The Complainant does state that she believes it is not within the right of the Board to mandate maintenance of items that are the responsibility of the owner and not the Board.

§55-79.57 of the Condominium Act is entitled “Assignments of limited common elements; conversion to common element.” The Complainant has not explained how the Association’s actions have violated this provision in the Condominium Act nor has she specified which paragraph of this provision is being violated. It does not appear that this provision is applicable to the present situation as it pertains to the assignment of limited common elements, the conversion of limited common elements to common elements, and the proper methods of memorializing such changes in the condominium instruments.

Finally, the third allegation is that the Association has violated §55-79.77 of the Condominium Act by not having a quorum present when the resolution was passed. The Complainant did not specify how the Association violated this provision and there is nothing in this portion of the Code of Virginia that would be applicable to the matter at hand. The Complainant may have meant to refer to §55-79.76 which does speak to quorum requirements for meetings of the executive organ since, in most instances, the

executive organ has the authority to pass resolutions for an association and a vote of the owners is not required. However, the voting requirements for passing a resolution are not set forth in the Condominium Act and the only way to determine if the executive organ has the power and authority to pass a resolution such as the one being considered here is to review and interpret the condominium instruments, which is not something this office has the authority to undertake, since our jurisdiction extends only to common interest community laws and regulations, not the governing documents of an association.

Based on the information provided in the Complaint, the Association does not appear to have violated any of the provisions of the Condominium Act alleged by the Complainant.

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
Rollingwood Condominium Association, Inc.