



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

May 2, 2017

Todd Haymore
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Cheryl Wolfe, Fresh Air Investments,
Association: Belview Bay Condominium Owners Association, Inc.
File Number: 2017-02366

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 a complaint to the Association, dated December 14, 2016. The Association provided a response to the Complainant on March 13, 2017. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 21, 2017 and received March 27, 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 several violations of the Condominium Act in her Complaint. Fortunately, most of the allegations have been resolved by the Association, and it is only the portion of the Complaint related to the reserve study and funds that must be addressed. The Complainant alleged a violation of §55-79.83:1(B).¹

The Complainant stated in her Complaint that the Association failed to include the information required under §55-79.83:1(B) in its annual budget. She further stated that the Association had a reserve study completed in June 2016 but was not referring to that study in the budget because the Association intended to revise it. The revisions were completed in November 2016 and the budget still does not reflect the June or the November version of the 2016 reserve study. The Complainant also expressed concern about the Association borrowing money from the Reserves, but that is not a matter over which we have jurisdiction.

The Association responded to the Complaint once in February, and again in March. In February the Association explained certain corrections to the reserve study and the Association's intent to adopt the Reserve Study at its upcoming annual meeting. The Association also noted that it had consulted with both an attorney and a manager as part of its work toward creating the annual budget.

Ultimately, I do not think the budget is too far from the requirements of the Condominium Act, but it does need to be adjusted to precisely meet the detailed descriptions set forth in §55-79.83:1(B)(1-3). Upon review of the budget I did not see a current estimated replacement cost (§55-79.83:1(B)(1)), the current cash reserves set aside or the expected contribution (§55-79.83:1(B)(2)), or a general statement describing the procedures used... (§55-79.83:1(B)(3)). Some of this information may be contained in the budget, but it is not readily identifiable since it is not referred to in the same language as used in the Condominium Act.

Required Actions

The Association must update its budget to ensure that it fully complies with the Condominium Act, and specifically §55-79.83:1(B)(1-3). Once this has been completed, I would ask that the Association forward a copy of the revised budget to my office via email

¹ B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and
3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect.

(cicombudsman@dpor.virginia.gov) or mail. I will provide 30 days from the date of this Determination for the Association to provide this information. A failure to do so, may result in a referral to the Common Interest Community Board for enforcement action if it deems such action appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Belview Bay Condominium Owners Association, Inc.