



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation
October 18, 2018

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Complainant: Rose Bugg
Association: Pemberton Green Townhouse Association
File Number: 2019-00904

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 August 14, 2018. The Association provided a response to the Complainant dated August 24, 2018. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 20, 2018 and received the same day.

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 that the Association failed to give notice of an additional assessment of \$40 which increased the monthly assessment from \$120 to \$160. The Complainant stated that the Association failed to provide notice of the increase and believes the failure to provide notice is a violation of §55-79.83¹ of the Condominium Act. The Complainant also wrote that the Association should have had a meeting within 60 days of the written notice in order to allow the owners to vote on whether to reduce or rescind the additional assessment. The meeting was not held and therefore the Complainant alleges a violation of §55-79.514(A)² of the Property Owners' Association Act.

In its final decision, the Association noted that the community does not fall under the Condominium Act, but instead is governed by the Property Owners' Association Act. The Association stated that there is no requirement for an association to hold a meeting within 60 days to rescind or reduce a special assessment. The Association further stated that §55-514 gives members "the opportunity to rescind or reduce a special assessment..."

The Association is correct that the Condominium Act is inapplicable and therefore the portion of the complaint dependent upon the Condominium Act cannot be addressed. As for the second allegation related to §55-514 of the Property Owners Association Act, there is nothing in the statute that requires an association to hold a meeting to rescind or reduce a special assessment. Instead the language simply states that a meeting can be convened and the majority of votes shall rescind or reduce the special assessment. Unless the governing documents specifically require the Association to hold such a meeting it does not appear that the Association has violated the statute. If the governing documents do require the Association to hold the meeting, this office has no authority to enforce the governing documents and therefore cannot require the Association to do so.

Required Actions

No action is required that pertains to the allegations in this NFAD. However, I will note that the Association failed to provide the Complainant with her right to file a Notice of Final Adverse Decision, as required by the Common Interest Community Ombudsman Regulations and did not include the Manager License Number (VAC 48-70-50 (10) and (9)).

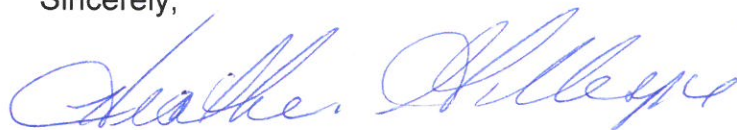
¹ E. Except to the extent otherwise provided in the condominium instruments, if the executive organ determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive organ shall have the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive organ shall give written notice of any additional assessment to the unit owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

² A. In addition to all other assessments which are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

The Association must ensure that it fully complies with the Regulations for any future final determinations that it may provide.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Pemberton Green Townhouse Association