



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

May 23, 2019

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Carolyn Bosiger
Association: The Crossings Property Owners Association
File Number: 2019-02748

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 27, 2018. The Association provided a response to the Complainant dated April 26, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 2, 2019 and received May 6, 2019.

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 stated in her complaint that the Association failed to conduct a complete reserve study since it focused only on the rear portion of the roofs of the buildings in the community and not the entire roof. The Complainant suggested that as a result of the incomplete reserve study of 2017, “the costs for replacements are unknown” and “homeowner fees cannot reflect ‘the current estimated replacement cost, estimated remaining life and estimated useful life, of the capital components’ as required by law. A failure to conduct a reserve study every five years is a violation of §55-514.1¹ of the Property Owners’ Association Act.

The Association responded to the allegations in the Complaint by noting that many repairs had been made to the rear roof portions over the years as they seem to be more problematic due to their pitch. The Association said that the original estimates for the potential roof repairs did only include the back half of the roofs but now includes the whole roof for each building. The Association also said that the reserve study is in the process of being revised and will be completed by November.

While the Association has obtained some estimates for roof replacement, such estimates only seem to pertain to the rear portion of the roofs and not the whole roofs. It is also not clear if there are any other capital components in the community that may need to be included as part of a reserve study. The minimal requirements are that associations “[c]onduct at least one every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components.” Since all capital components should be included in the reserve study, the Association does not appear to be in compliance with the provisions of the Property Owners’ Association Act if it has failed to include all capital components, which would most likely include both the front and the back of a roof.

Required Actions

Because it does not appear that the Association has conducted a reserve study in the past five years that fully addresses the repair, replacement and restoration of all capital components, it will need to update the 2017 reserve study and provide the information required by law or create an entirely new reserve study that fully complies with the law. While the Association did say it is revising its reserve study and will have it ready by November, I think that six months is too long a period of time to address this issue. Instead, I ask the Association to prepare a revised reserve study (or an entirely new reserve study) within 90 days of the date of this Determination and submit a copy to this

¹ A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

office. The Association will have to ensure that it follows the requirements in the Property Owners' Association Act, specifically §55-514.1.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Crossings Property Owners Association