



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

October 11, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Jerry King
Association: Pleasant Valley Condominium
File Number: 2014-00653

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 July 18, 2013. The Association responded with an email dated August 18, 2013. The email appears to be the only response received by the Complainant, but it was not designated as a Final Determination, nor did it contain notice of Complainant's right to file a Notice of Final Adverse Decision (NFAD) with the Office of the Common Interest Community Ombudsman (OCICO). The NFAD submitted to the OCICO was dated August 20, 2013. As required by the Common Interest Community Ombudsman Regulations (Regulations) a copy of the NFAD was sent to the Association on September 24, 2013.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision. The primary concern in the Complaint submitted to the Association was that the Association has not established a reserve fund or created a five-year plan for capital components. Complainant also alleges that maintenance is not being carried out as necessary and that carpet replacement is long overdue, the condominium hallways are not kept clean, and the Association has not sent out bids for cleaning services or mowing.

Due to the subjective nature of maintenance standards, this office cannot provide a Determination as to whether the present methods of maintenance and the cleanliness of the hallways or lack thereof are consistent with common interest community law or regulations. The Condominium Act does speak to maintenance responsibilities of Associations under §55-79.79 but even with statutory requirements in place, this office

does not have the capability or the authority to make a determination as to whether or not the standards for maintenance, repair, renovation, restoration or replacement are being met and to whom the responsibility belongs.

Bidding for services is a requirement that would fall under the condominium instruments and not under common interest community law or regulations. As such, this office does not have jurisdiction over the matter and this allegation is not appropriate for submission through the association complaint process.

Reserve studies are clearly required under the Condominium Act, and are specifically set forth in §55-79.83:1 of the Code of Virginia. These provisions require, at a minimum, that the executive organ shall "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." The executive organ is also required to review that study annually and make any appropriate adjustments. The Association stated in its response that there was a Reserve Fund but provided no further information. No information regarding a Reserve Study was offered in the Association's response to the Complaint.

Required Actions

As previously noted, several of the allegations contained in the NFAD were not appropriate for submission through the complaint process, and as a result, no determination regarding those allegations can be provided by this office. An alleged failure to maintain a Reserve Fund or carry out a Reserve Study is troubling, although the Association has stated in its response that "the reserve fund contains money and is maintained on a regular basis."

In order to ensure that the Reserve Study has been completed and that the Reserve Fund is sufficiently funded, **the Association must provide this office a copy of its most recent Reserve Study and any supporting documentation it believes necessary to show that the Reserve Fund is being properly maintained.** The Association should redact any information that should not be made available to the public, as this office is subject to the Freedom of Information Act (FOIA) and such documents could be requested pursuant to the FOIA by any citizen in the Commonwealth.

The OCICO must receive this information within three weeks of the date of this Determination. In the event that the information is not received by **November 1, 2013**, the matter will be referred to the Common Interest Community Board, as required by the Regulations.

The Association also has a responsibility and obligation to follow the Regulations when responding to Complaints that have been submitted through the Association's Complaint Process. It appears that the Complainant never received a formal Final Determination from the Association, nor was the Complainant provided notice of his right to file a NFAD with this office. The Association is formally on notice that all future Complaints must be handled in accordance with the Common Interest Community

Ombudsman Regulations. Failure to do so may result in a referral to the Common Interest Community Board for whatever action it may deem appropriate.

If either party has questions regarding this Determination, please feel free to contact me. This Determination is final, and there will be no further review.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Pleasant Valley Condominium
Via U.S. Mail and Electronic Mail