



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

January 16, 2014

Complainant: Karl N. Golovin
Association: Country Club Green Condominium
File Number: 2014-01835

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 a complaint to the Association dated September 18, 2013. The Association provided a Notice of Final Decision (NFAD) to the Complainant dated October 24, 2013. The NFAD was received by this Office on November 25, 2013.

Determination

The Complainant submitted a complaint regarding the replacement of balconies in certain condominium units. The Complainant alleges that the manner by which the Association intends to replace the balconies "violates the Association's obligations under Virginia law and under the condominium association's Bylaws." No specific reference as to which obligation under Virginia law is being violated was provided in the NFAD. The Complainant states in its Complaint to the Association that "the Bylaws and Declaration of Condominium which have been in effect since establishment of the Association and in particular my purchase of my unit ... clearly provide that removed balconies must be replaced to first quality standards as fully cantilevered, concrete balconies." While this may be true, according to the condominium instruments, there is no such language or requirement in the Condominium Act or the Condominium Regulations.

The Office of the Common Interest Community Ombudsman (OCICO) has the authority and responsibility to provide a determination for Notices of Final Adverse Decision. A Notice of Final Adverse Decision must be filed with the OCICO in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman

Regulations. In order to meet the requirements of both common interest community law and regulations, all Notices of Final Adverse Decision must evolve from an original complaint submitted through an association complaint procedure or process. The complaint must be submitted in accordance with the association complaint procedure and, as very specifically set forth in the Common Interest Community Ombudsman 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 Common Interest Community Ombudsman Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not pertain to common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and is not a complaint that should ever be the subject of a Notice of Final Adverse Decision. In the event that such a complaint is submitted to this office as part of a Notice of Final Adverse Decision, no determination will be provided.

Because the allegations contained in the original complaint pertain only to a possible violation of the condominium instruments, and no specific violation of common interest community law or regulations, the Complaint submitted to the Association was not appropriate for the Complaint Process and never should have been submitted through that particular process. To further clarify, the scope of authority of this office pertains solely to common interest community laws and regulations. The scope of the Complaint you submitted to the Association pertained solely to the condominium instruments. Because this office has no authority over your condominium instruments and because condominium instruments are not considered common interest community law or regulations, the Complaint you submitted was not appropriate for the association complaint procedure, and the subsequent NFAD you filed with this office is not one for which a Determination will be provided by this office and the file will be closed with no further action.

Required Actions

No actions required.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Country Club Green Condominium