



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

August 27, 2014

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Lawrence Layman
Association: McLean House Condominium
File Number: 2015-00400

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 on June 19, 2014. The Association provided a final determination to the Complainant on July 18, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman July 31, 2014. A cover letter was included with the NFAD, but to the extent that information was contained in that cover letter that was not raised in the Complaint submitted to the Association, the cover letter could not be considered in its entirety as part of my review of the NFAD.

Determination

The Complainant stated in his Complaint that the Association's annual budget for 2015 does not comply with the Condominium Act, and provided two examples of the noncompliance. The Complainant alleged that the Association failed to include the estimated remaining life for each capital component and failed to include the replacement cost for each capital component in the 2015 Annual Budget. The Complainant also stated that the annual budget needs to comply with all portions of the Condominium Act and specifically referenced §55-79.83:1, which outlines reserve study requirements. Because no other specific violations of the Condominium Act were included in the Complaint, and were only alluded to, this Determination will only address the two specific allegations set forth in the Complaint.

This office contacted the manager for the Association in order to determine if the attachments included in the submitted NFAD were part of the original complaint. In addition, it was not clear if the attachments, which appeared to be budgets from a reserve study, were actually from the reserve study for the Association or a result of research that the Complainant had undertaken. The manager provided clarification as well as a copy of a letter written by the reserve study consultant that outlined the reason that the estimated remaining life was not included in the reserve study.

Ultimately, the language in the Condominium Act that outlines the requirements for reserve studies and subsequent budgets based on the reserve studies is clear and unambiguous. As the Complainant has noted, there are three particular requirements of the unit owner's budget, if a reserve study indicates that the association must budget for reserves. The three requirements are "the current estimated replacement cost, estimated remaining life and estimated useful life of the capital components" (VA Code 55-79.83:1(B)(1)). While the reserve study consultant provided a reasonable explanation as to why the estimated remaining life was not included in the reserve study, the language in the Code cannot be ignored.

Required Actions

As required by the Condominium Act, the Association must update its 2015 Annual Budget to ensure that the three requirements outlined in §55-79.83:1(B)(1) of the Code of Virginia are included in that budget. The Association will be provided thirty days from the date of this letter (**Friday, September 26, 2014**) to revise the annual budget and provide this office a copy of the revised budget that reflects the necessary information.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
McLean House Condominium