



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

April 17, 2013

Complainant: Martha Lambert
Association: Sea Oats Condominium Unit Owners Association
File Number: 2013-01863

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 November 27, 2012. The complaint contained a primary allegation that the Association failed to repair an exterior door jamb. The Association, through its manager, responded with a letter explaining, among other things, why the association did not believe it was responsible for the repair. The response letter was dated December 26, 2012 and explained that the door jamb in question was part of a limited common element and therefore the Complainant was responsible for any repairs to the door jamb.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision (NFAD). Included with the NFAD were additional emails that were exchanged between the Association and the Complainant after the November 26, 2013 letter had been provided to Complainant, as well as an attachment to the Notice of Final Adverse Decision dated January 2013, and thus not part of the original complaint. To the extent that any of the documents submitted provide additional information beyond what was included in the original complaint, they were excluded from consideration of the NFAD.

Two primary issues exist in this NFAD, the first is whether the repairs to the door jamb(s) should be carried out by the Association or by the Complainant. The Complainant herself cites the Declaration for the Association and references the plats and plans of the Sea Oats Condominium Association in defense of her belief that the Association should carry out the repairs.

Defining what type of element the door jamb is does not ultimately matter in this determination as it is the condominium instruments that ultimately define what constitutes a limited common element and this office has no jurisdiction or authority to interpret the condominium instruments and determine what is or is not a limited common element. Based on the Condominium Act definition of a Limited Common Element, the term “means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.” Based on that definition it seems that the door jamb may be a limited common element and therefore the owner is responsible for its repair.

In addition, 55-79.83 states “Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred.” Clearly, in order to make a valid, factual determination as to whether the door jamb is a common element or a limited common element, it is necessary to examine and interpret the condominium instruments. As noted previously, the OCICO does not have the authority to do so.

The OCICO does not find that there has been a violation of of any law or regulation governing common interest communities in relation to the matter of whether the association was responsible for repairing the door jamb(s).

A second issue that arose in the Notice of Final Adverse Decision was the way in which the Complaint was handled by the Association. Based on the information provided, it is not clear that acknowledgement of the Complaint was provided to the Complainant, nor is it clear that the Complainant was notified of the time, place, and date when the Complaint would be considered. The Association also failed to provide a Final Decision or Final Adverse Decision to the Complainant in the form required by the Regulations. This is troubling, as it means that ultimately, the Notice of Final Adverse Decision submitted to this office was incomplete since it did not contain a Final Decision from the Association. However, it seemed unfair to hold the Complainant accountable for the failure of the Association to provide a document that met the requirements of the Regulations.

Required Actions

No action is required of either party in relation to the question of limited common element versus common element.

The Association, and its manager, must ensure that they follow the Regulations precisely for all future Complaints. This NFAD will be provided to the Common Interest Community Board (CICB) for review, but this office will make no recommendation or suggestion to the CICB as it pertains to the failure to abide by the Regulations. If the CICB considers further action to be necessary, it may take whatever action it deems fit. If either party has any questions regarding this determination, you are welcome 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
The Charleston Condominium Unit Owners Association