



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell  
Governor

June 5, 2013

James S. Cheng  
Secretary of  
Commerce and Trade

Gordon N. Dixon  
Director

Complainant: Martha Lambert  
Association: Sea Oats Condominium Unit Owners Association  
File Number: 2013-03018

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*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.*

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## Complaint

Complainant submitted a complaint to the Association dated April 23, 2013. The complaint alleged that the Association had failed to correct an error in the Association's documents and was improperly using Association funds to replace skylights. The Association manager responded on behalf of the Association on April 30, 2013 and denied the allegations. The Complainant submitted several pages of additional information that was not part of the original complaint. The additional information was reviewed but is not part of this Determination as the Association was not given additional opportunity to provide further information. The Notice of Final Adverse Decision was received by this office on May 10, 2013.

## Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision (NFAD).

The Complainant believes that the Amended and Restated Declaration has incorrectly defined skylights as common elements rather than as limited common elements. Complainant believes that the attorney who drafted the Declaration did so incorrectly. Complainant also argues that skylights should be considered "windows" and therefore should be labeled in the same manner as other windows in the association, which are considered to be limited common elements.

This office cannot interpret the condominium instruments and provide the legal advice or interpretation necessary to make the determination Complainant is requesting,

which is essentially that the Declaration is incorrect and that skylights should be considered limited common elements. I would note that §55-79.50 of the Code of Virginia does state "*Except to the extent otherwise provided by the condominium instruments:*" and goes on to provide statutory descriptions of what may constitute common elements and limited common elements and includes a reference to 55-79.41, which is entitled "Definitions." The Complainant may wish to seek the advice of legal counsel regarding the appropriate interpretation of the condominium instruments and whether or not the drafter of the condominium instruments erred.

Required Actions

No action is necessary

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather S. Gillespie".

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Sea Oats Condominium Unit Owners Association