



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

April 2, 2026

Complainant: Nancy Sopher
Association: Farmcolony Homeowners' Association
File Number: 2026-00161

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Nancy Sopher ("Complainant"), submitted a complaint to the Farmcolony Homeowners' Association ("Association") dated April 7, 2025. The Association provided a response to Complainant's complaint dated June 5, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated June 12, 2025, and the NFAD was received by our Office on July 2, 2025.

Authority

In accordance with its regulations, this Office, as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 of the Code of Virginia of 1950, as amended ("Va. Code") and the Common Interest Community Ombudsman regulations ("Regulations"). An NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and as specifically set forth in the 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 Regulations, "applicable laws and regulations" pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination or Issues to be Decided

The Complainant presents a total of 3 allegations against the Association, all of which concern a vegetable garden that is alleged to be on common land governed by the Association. As described more fully below, the allegations concern the adoption and enforcement of rules by the Association, whether the Association can impose a fee for maintenance of the vegetable garden, and whether the Association assigned additional value to the vegetable garden, in violation of the Virginia Property Owners' Association Act ("POAA"). The following allegations are further discussed in detail below.

1. *Did the Association violate the POAA, specifically Va. Code §55.1-1819, regarding the adoption and enforcement of rules related to the vegetable garden.*

The Complainant contends that the Association violated the POAA, specifically Va. Code §55.1-1819, when it levied a surcharge on the use of common land for a vegetable garden, when it was already governed by an easement in the declaration. The Complainant further alleges that the Farmcolony Deed of Dedication and Declaration expressly reserves to the members a non-exclusive perpetual right and easement of enjoyment and use in and to the "farm" in common with all other owners.

In order to properly adjudicate this allegation, examination and interpretation of the Association's governing documents must occur. However, that is beyond the scope of authority of this Office.¹ Thus, this Office will not make a determination on this first allegation, but will instead refer the Complainant to seek legal guidance to have this matter adjudicated, if she so wishes, in a court of appropriate jurisdiction.

2. *Did the Association Violate the POAA, specifically Va. Code §55.1-1805, regarding the imposition of charges against one owner but not all owners, related to the vegetable garden?*

The Complainant alleges that the Association violated the POAA, specifically Va. Code §55.1-1805, which relates to fees that can be levied to members of the Association. Va. Code §55.1-1805, states that:

¹ See Va. Code §54.1-2354.3

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall impose a charge against one or more but less than all lot owners unless the charge is (i) a fee for services provided, (ii) related to use of the common area, or (iii) a fee expressly authorized in § 55.1-2316.²

In her complaint, the Complainant states that this garden in question upon which the fees are levied, the Farmhouse Garden, is a common interest area similar to the Pasturegate Garden, also part of the Association. Pasturegate Garden is alleged by the Complainant to have no usage fees. The Complainant further alleges, in essence, that the Association cannot levy a fee upon one garden and not levy upon another similarly structured garden under the POAA.

In response to this argument, the Association states that they are permitted to assess fees related to the use of the common areas. As stated in exception (ii) of Va. Code § 55.1-1805, the Association is permitted to impose a charge against one or more but less than all lot owners unless the charge is related to the use of the common area.³ The documentation in the record indicates that this charge was assessed in order to allow individuals to farm the Farmhouse Garden, a common area, on their own individualized plots. Thus, this Office finds that no violation of the POAA occurred when the Association levied a fee for use of the Farmhouse Garden.

The Complaint also alleges that the two gardens, the Farmhouse Garden and the Pasturegate Garden, are not treated equitably for budgeting purposes. The evidence in the record indicates that the Board of the Association gave money in 2024 for “Garden Expenses” in the amount of \$1,000.00. The Complainant alleges that this was for the Pasturegate Garden for unspecified items. However, when a request was made for funds for the repair of raised beds for the Farmhouse Garden, the Association President indicated that the repair is the responsibility of whoever chooses the plot.

Given the nature of this case, and without having seen the contract to rent a Farmhouse Garden plot (which is alluded to in the minutes of the December 12, 2024, meeting supplied in the record) and knowing more about how the plots are maintained and structured, it is impossible to say that the POAA has been violated. It is true that there is no dispute that the Farmhouse Garden is a common area, as defined by Va. Code §55.1-1800. Under the POAA, a common area is, “a property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.”⁴

The key word in the above sentence is “or.” It is unclear from reading the declaration and interpreting the governing documents of the Association, as to whether the Association is contractually required to maintain the common areas, like the Farmhouse Garden, or whether the common area is just owned or leased by the Association. As above, this interpretation of the

² Va. Code §55.1-1805; *See also* Va. Code § 55.1-2316, which relates to fees associated with resale certificates, which are not applicable in the instant case.

³ *See* Va. Code §55.1-1805

⁴ Va. Code §55.1-1800

governing documents is outside the scope of authority of this Office, and this argument must instead be made to a court of competent jurisdiction.⁵

However, this Office cautions the Association that if there is an expressed duty of the Association to maintain common areas, it should consider what parameters it is using for denying maintenance to the Farmhouse Garden and codify them in the contractual terms of the rental agreement for a plot, or in some other method so all parties know the rights and obligations to rent said plot.

3. Did the Association violate the POAA, specifically Va. Code §55.1-1802?

In her third allegation, the Complainant states that the fee assessed on members of the Association to rent a Farmhouse Garden plot violates the provision of the POAA, specifically Va. Code §55.1-1802, because common space is viewed as “having no value in itself for assessment purposes.”

Va. Code §55.1-1802(B) states that, “Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in §58.1-3284.1 through the date of the transfer to the association.”⁶ The Complainant cites the definition of open or common space, under Va. Code §58.1-3284.1, when she makes the argument that common areas have no value and should thus not have a fee assessed to them for their use by members.⁷ However, Va. Code §58.1-3284.1 is a real estate tax code and **not** a CIC statute. The open or common space definition in Va. Code §58.1-3284, is used “for purposes of this section,” meaning for purposes of real estate assessment.⁸ It does **not** apply to any CIC statute, and it does not apply to the determination of whether fees may be levied by the Association for common area usage, which is already authorized under Va. Code §55.1-1805 (as stated above). As a result, this Office finds that there is no violation by the Association of the POAA, specifically Va. Code §55.1-1802.

Conclusion

Based on the foregoing, we find that the Association did not violate the POAA in any of the sections cited by the Complainant.

Required Actions

However, it is suggested that the Association review the maintenance requirements under its governing documents and garden contracts to ensure that the rights and duties of the Association and the members regarding maintenance of the Farmhouse Garden are expressly stated.

Please contact me if you have any questions.

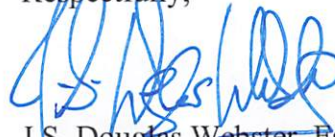
⁵ See Va. Code §54.1-2354.3

⁶ Va. Code §55.1-1802(B)

⁷ Va. Code §58.1-3284.1

⁸ See Va. Code §58.1-3284(A)

Respectfully,



J.S. Douglas Webster, Esquire,
CIC Ombudsman
Compliance & Investigation Division