



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

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Secretary of Labor

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Director

June 29, 2026

Complainant: Joseph Garzon
Association: Unit Owners' Association of Somerset at Westridge
File Number: 2026-02113

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Joseph Garzon ("Complainant"), submitted a complaint to the Unit Owners' Association of Somerset at Westridge ("Association") dated November 11, 2025. The Association provided a response to Complainant's complaint dated December 11, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated December 15, 2025, and the NFAD was received by our Office on December 29, 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 an 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

The Complainant presents a single allegation – that the Association did not comply with Va. Code § 55.1-1945(A) of the Virginia Condominium Act (“VCA”), when the Association failed to provide notice, that the responsibility for maintenance, repair, and replacement shifted from the Association to the individual members. The Complainant also argues that the governing documents of the Association were also violated. However, that is beyond the scope of authority of this Office to determine, as this Office can only determine whether a common interest statute or regulation has been violated by the Association.¹

Furthermore, the Complainant submitted additional information to this Office with his review request. This information will not be considered, as the regulations regarding the NFAD process require that the Association be on notice of any relevant information at the time that its decision was rendered on December 11, 2025.² Because the Association did not have the opportunity to address this additional information, it will not be reviewed as part of this NFAD. To the extent that this additional information or arguments raise additional violations of state law or regulation, the Complainant should file a new complaint or perhaps speak with counsel on what other remedies at law may be available to him in another forum.

1. Did the Association violate the VCA with respect to failing to provide notice to the Complainant regarding his individual responsibility for maintaining and repairing his deck?

The Complainant contends that the Association violated the VCA by failing to provide him and other members with adequate notice that the responsibility for maintenance, repair, and replacement of his deck was shifting to him and away from the Association. The Association responded that nothing in Va. Code § 55.1-1945(A) requires that the Association put the owners on notice and an opportunity to participate in decisions, such as this.

Va. Code § 55.1-1945(A) states that

¹ See Va. Code § 54.1-2354.3; see also 18VAC48-70-10.

² See 18VAC48-70-90

The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices. The unit owners' association shall maintain individual assessment account records. The unit owners' association shall maintain a record of any recorded lien at least as long as the lien remains effective.³

Based on our reading of the statute, there is nothing specifically in the VCA that explicitly prohibits a shift in maintenance cost from the Association to the individual members without notice or without an opportunity to be included in the decision-making by membership. Thus, this Office finds that the Association did not violate the VCA.

2. Was the December 11, 2025, response from the Association a proper response under 18VAC48-70-50?

This Office did want to make an additional statement regarding the putative NFAD submitted by the Association's counsel on December 11, 2025. Counsel reached out to this Office and expressed that the communication of December 11, 2025, was not an NFAD. However, in reading this response from the Association, counsel for the Association addressed the Complainant's complaint specifically and completely, effectively rendering it a final decision, outside any other extrinsic evidence that proves it otherwise. However, the response does not contain the required elements under 18VAC48-70-50, such as the registration number of the Association, right to file the decision with the Ombudsman and the Ombudsman's contact information, etc.⁴

It is the position of this Office that when a sophisticated party, such as the law firm that represents an Association, responds directly to the merits of a complaint with completeness and specificity, that response becomes the NFAD. In the absence of this approach, associations would be free to respond "informally" to complaints without triggering review rights by this Office, essentially answering complaints but not providing adequate due process.

Conclusion

Based on the foregoing, this Office finds no evidence that the Association violated the VCA, specifically Va. Code § 55.1-1945(A)

Required Actions

No action is required of the Association. However, the Association is reminded that if they respond to the merits of a complaint filed by an Association member, this Office may treat that response as an

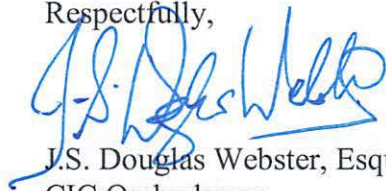
³ Va. Code §55.1-1945(A).

⁴ See 18VAC48-70-50.

NFAD for purposes of oversight by this Office. Further, all such responses provided to association members should contain the necessary information required by the regulations for NFADs.⁵

Please contact me if you have any questions.

Respectfully,



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

⁵ *Id.*