



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Abigail D. Spanberger
Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

April 6, 2026

Complainant: Denise Hicks
Association: Windgate III Condominium Association
File Number: 2026-00292

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Denise Hicks ("Complainant"), submitted a complaint to Windgate III Condominium Association ("Association"), dated May 8, 2025. The Association provided a response to the Complainant's complaint dated July 1, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated July 15, 2025, and the NFAD was received by our Office on July 22, 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 or Issues to be Decided

The Complainant presents a single allegation against the Association. As described more fully below, the allegation concerns a putative fee of \$75.00 that the Complainant was to be charged by the Association in order to access certain records that she had requested, related to the Complainant desiring to rent their condominium. The Complainant believes that this is a violation of the Virginia Condominium Act (“VCA”), under Va. Code §55.1-1945 (E). The Complainant also believes that this fee should have been adopted via Board vote, pursuant to Va. Code §55.1-1943.

1. Lawfulness of the \$75 Fee for Access to Board Records Related to the Association Rental Policies

As above, and pursuant to the Virginia VCA, specifically Va. Code §55.1-1945, homeowners have the right to inspect and/ or obtain all the books and records of the Association, with some limiting exceptions.¹ In the instant case, the Complainant asked on April 30, 2025, for access (emphasis added) to specific records. On May 5, 2025, the Association President emailed the complainant, stating that, “As with many official homeowner administrative documents there is a fee to access the information will be charged with future requests to the Wait List. The fee is currently \$75.” This statement is contrary to Virginia law.

Subject to some limitations (which are not applicable in the instant case), the VCA grants Association members, such as the Complainant, the right to access all books and records kept on behalf of the Association.² In the NFAD of July 1, 2025, the Association took the position that they did not violate the VCA because they did not actually collect the money and “mistakenly” referenced a possible \$75.00 charge. The Association’s claim that this was a mere mistake is dubious.

Equally dubious is the stated Association remedy in the NFAD, which was to adopt a resolution and fee schedule that requires an Association member to pay up to \$150.00, per hour, in 15-minute

¹ See Va. Code § 55.1-1945.

² See Va. Code § 55.1-1945 (B).

increments (or double the original \$75 flat fee) for someone to serve as “custodian” of records while they are being examined by the Association member.

A similar determination has been previously made by this office in the matter of Dierdorff v. Heritage Hunt Homeowners Association, Inc.³ While referencing the Virginia Property Owners’ Association Act (“POAA”), the language is substantially similar to the language at issue within the VCA. In that determination, the CICO writes that

While Subsection (E) of Va. Code § 55.1-1815 permits an association to impose fees for its actual costs, it is only when the member request copies. It states:

Prior to **providing copies** of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, **not to exceed the actual costs of such materials and labor**. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made. Va. Code § 55.1-1815(E). (Emphasis added).⁴

Furthermore the VCA, in Va. Code § 55.1-1945 (D) states that

Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.⁵

This provision permits the Association to only impose fees for reasonable costs related to producing copies of records unless such records contain protected information under subsection C of Va. Code § 55.1-1945. The VCA, at Va. Code § 55.1-1945(E) clearly states that charges can only be imposed and collected when the Association is providing copies of books and records. This view is further supported by the fact that the General Assembly did not, when applying conditions to the right to review, did not see fit to allow for imposing a charge on the person seeking to review the records.⁶ It is entirely foreseeable that records requests to the Association would not fall under subsection C, and require costs

³ See CICO Decision 2024-02313.

⁴ *Id.*, at 3.

⁵ See Va. Code § 55.1-1945.

⁶ See, Va. Code § 55.1-1945(B).

for “responding” and “reviewing.”⁷ Furthermore, nothing in this statute specifically authorizes a cost for having the Association present, or serving as custodian. Instead, the statute states that

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.⁸

Under the VCA, the measures undertaken by the Association to remedy the complaint and violation(s) alleged by the Complainant are themselves a violation of the VCA. Given the cost schedule of a maximum of \$150.00, per hour, in relation to the previous flat fee cost of \$75.00, the Association appears as though it is trying to chill the lawful access to its records and books by its membership.

The Complainant makes a passing reference to Va. Code §55.1-1943 as grounds for a violation by the Association regarding failure to record a vote to establish fees. This Code covers declarant control of a condominium and does not appear to be germane to this case, as fees can only be set when they are reasonable and related to the specific acts covered under Va. Code §55.1-1945.⁹

Conclusion

In sum, we find that the Association violated Va. Code §55.1-1945, even though the \$75 fee was not collected from the Complainant. This Office further finds that the remedy undertaken by the Association in response to this complaint also also violates the VCA.

Required Actions

The Association is recommended to examine their custodial cost schedule and ensure that it complies with the VCA. Further, the Association should, within thirty (30) days of the date of this determination, eliminate any provisions that impose a charge for fees for requesting to review the Association's books as records, as such provision violates the language of Va. Code § 55.1-1945.

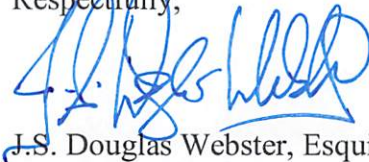
Please contact me if you have any questions.

⁷ *Id.*

⁸ See Va. Code §55.1-1945 (B).

⁹ See Va. Code §55.1-1944; See also Va. Code §55.1-1945.

Respectfully,

A handwritten signature in blue ink, appearing to read "J.S. Douglas Webster", is written over the printed name.

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