



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Abigail D. Spanberger
Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

July 16, 2026

Complainant: Hiu Yu
Association: Brookleigh Homeowners' Association
File Number: 2026-02866

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Hiu Yu ("Complainant"), submitted a complaint to the Brookleigh Homeowners' Association ("Association"), November 7, 2025. The Association provided a response to Complainant's complaint dated March 9, 2026. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated March 27, 2026, and the NFAD was received by our Office on April 10, 2026.

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 alleges nine total violations. The Complainant first alleges that they cured the violation following the initial violation. Secondly, the Complainant argues that Va. Code § 55.1-1819(A) was violated with respect to notice and due process related to a fence violation issued to the Complainant by the Association. The Complainant thirdly alleges that the Va. Code § 55.1-1819(A) and Va. Code § 55.1-1816(G) of the Virginia Property Owners' Association Action ("POAA") was violated, related to due process concerning the hearing concerning the fence replacement. Fourthly, the Complainant argues that Va. Code § 55.1-1819(B) was violated by the Association when they issued a subsequent fine as a hearing result, and the Complainant further alleges that the notice was procedurally deficient. The Complainant argues in his fifth allegation that the Association violated Va. Code § 55.1-1819(A) and Va. Code § 55.1-1819(B) when the Association unilaterally withdrew fines from the Complainant's prepaid dues account without prior notice, and the Complainant further alleged a breach of fiduciary duty by the Association.

The Complainant's remaining allegations (six through nine) raise issues regarding Virginia common law and violations of the Virginia Nonstock Corporation Act ("VNCA")

This Office only has authority to determine whether common interest community statutes or regulations have been violated by the Association.¹ Based on what was alleged in the November 7, 2025, complaint, that would exclude complaints one, six, seven, eight, and nine. The violations of common law and the VNCA may have additional remedies that are available to the Complainant, but those remedies must be sought in the proper forum and/ or a court of appropriate jurisdiction.

With that said, this Office will address the Complainant's four remaining allegations (allegations two, three, four, and five) that the Association violated the POAA. Those allegations are further discussed below.

1. *Did the Association violate Va. Code § 55.1-1819(A) when it found that full fence replacement was required by the Complainant without issuing a subsequent notice to do so?*

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

The Complainant contends that the Association violated the POAA, specifically Va. Code § 55.1-1819(A), because the Association improperly escalated the original violation in demanding full fence replacement without issuing a new notice or opportunity to be heard on the new issue. The Association, in its response, states that it believes that “due process was followed regarding the fence violation, and the fence has not yet been brought into conformance.”

Va. Code § 55.1-1819(A), states that

Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.²

This provision applied strictly to the ability of the Association board to promulgate, repeal, or amend, enforcement regulations. The Complainant, by way of their complaint, seeks to use this statute to assert that he was not given proper notice of the need to replace his fence as the January 8, 2025, third notice of enforcement. There is nothing within subsection A of Va. Code § 55.1-1819 that prohibits expressly the allegation of one violation and subsequently finding of another.

However, Va. Code § 55.1-1819(C) reads that

Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.³

The January 8, 2025, notice stated the violations were as follows: “trim/ siding on property must be repaired/ repainted. Front door must be repainted. ***Fence must be power washed/ cleaned.*** Siding in rear location must be repaired or replaced.” (Emphasis added).

On February 2, 2025, following the January 29, 2025, meeting of the Association Board, the Association informed the Complainant of the hearing results. Those results stated that the

² Va. Code § 55.1-1819(A)

³ Va. Code § 55.1-1819(C)

Complainant's fence was in disrepair and must be replaced as a result of a unanimous vote by the Association Board. However, just above that finding, the Association states that the hearing was regarding the violations from January 8, 2025. There was nothing in the notice of violation from January 8, 2025, or in the February 2, 2025, decision of the Association Board, that alleged the fence was in disrepair or in need of repair- only that it needed to be cleaned.

The Association is required, under the POAA, to provide a reasonable opportunity for the Complainant to be heard before the Board of directors if the violation remains uncorrected.⁴ This did not occur because the Complainant was never on notice that the replacement of his fence was even being considered for enforcement action by the Board until the decision was made, based on the information in the record. Taking additional action outside of what was in the violation notice does not promote Association transparency, nor does it dovetail with the notice requirements of the POAA.⁵ As a result, this Office finds that the Association violated the POAA, specifically, Va. Code §55.1-1819(C), when it made an enforcement determination that the Complainant's fence should be replaced without giving him an adequate enforcement notice addressing the same prior to the Board decision.

This Office strongly recommends that any fines association with the replacement of the fence be reimbursed by the Association, if that has not already occurred. Furthermore, if the Association believes that the Complainant's fence requires replacement, the Association must send the Complainant an enforcement notice that places the Complainant on adequate notice of what corrective action is being sought by the Association, in accordance with Virginia law. And then the Association must, in accordance with Va. Code § 55.1-1819(C), give the Complainant "a reasonable opportunity to correct the alleged violation after written notice of the alleged violation" and then give the Complainant the opportunity "to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents" before imposing any fines.⁶ It does not appear that this occurred either.

2. Did the Association violate Va. Code § 55.1-1819(A) and Va. Code § 55.1-1816(G), during January 29, 2025, hearing, related to the Complainant's fence?

The Complainant alleges that the hearing was limited only to the siding replacement issue, and that the fence replacement issue was not raised, discussed, or decided. The Complainant further alleges that the fence replacement was discussed in closed executive session without the Complainant present. The Association responded that they did not feel they violated the Complainant's due process. The Complainant cited violations of Va. Code §55.1-1819(A) and Va. Code § 55.1-1816(G) in his complaint.

As stated above, the provision, Va. Code § 55.1-1819(A), applied strictly to the ability of the Association board to promulgate, repeal, or amend, enforcement regulations. There is nothing within subsection A of Va. Code §55.1-1819 that speaks directly to the due process component of adjudicating a violation. Furthermore, Va. Code §55.1-1816(G) does not exist.

⁴ See *Id.*

⁵ See *Id.*

⁶ See Va. Code § 55.1-1819(C).

However, Va. Code § 55.1-1816(C) expressly speaks to when an executive session may be held.⁷ Among those times when an executive session may be held is when the Association considers matters involving violations of the declaration or rules and regulations.⁸ Thus, the Association did not violate the POAA when it met in executive session to discuss the Complainant's alleged violations of the governing documents of the Association. However, that does not negate the Association's violations of the Complainant's rights under Va. Code § 55.1-1819(C) (as discussed above).⁹

3. *Did the Association violate Va. Code § 55.1-1819(B), when it issued a subsequent fine notice referencing fence replacement as a "hearing result?"*

As we have stated above, we find that the Association clearly violated the POAA by improperly demanding that Complainant replace his fence without following the rules for notice, a time to correct, and issuing a violation. In this allegation, the Complainant alleges that he was issued a procedural and substantive defective hearing result because the decision failed to state the lawful basis, the specific violation, or the actual dollar amount. The Complainant alleges that this was a violation of Va. Code § 55.1-1819(B). Va. Code § 55.1-1819(B) states that

The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.¹⁰

This statute merely provides that the Association has the authority, subject to the text of the governing documents of the Association, to suspend a member from common areas or assess fines against a member for a violation of the rules and regulations.¹¹ It does not enumerate a requirement that the notice of violation state a lawful basis and/ or dollar amount of the fine.¹² These items of information that one would expect to find in a notice of violation and the subsequent process afforded by Va. Code § 55.1-1819(C) when conducted properly. Thus, while the this Office has found that there were due process violations (covered above), this Office does not find that the POAA under Va. Code §55.1-1819(B), was violated.

⁷ See Va. Code §55.1-1816(C).

⁸ See *Id.*

⁹ See Va. Code §55.1-1819(C).

¹⁰ See Va. Code §55.1-1819(B).

¹¹ See *Id.*

¹² See *Id.*

4. *Did the Association violate Va. Code §55.1-1819(A) and Va. Code § 55.1-1819(B), to the extent that it collected fines from the Complainant unilaterally without prior notice of the violation?*

Here, the Complainant alleges that the Association violated Va. Code § 55.1-1819(A) and Va. Code §55.1-1819(B), because the Association unilaterally withdrew fines from the Plaintiff's account without notice of the violation, or specification of the amount. The Complainant further alleged that the Association tried to conceal this behavior. As stated above, Va. Code § 55.1-1819(A) and Va. Code § 55.1-1819(B), related specifically to the powers granted to the Association Board, subject to the governing documents, to establish and adopt regulations, and to enforce regulations.¹³ Neither statute states that the Association can or cannot withdraw money from the Complainant's account.¹⁴ Va. Code §55.1-1819(B) merely states that charges can be assessed, but it does not say how those charges may be collected.

The POAA, though, does make clear that the Association cannot assess a fine until it has complied with the due process provisions of Va. Code § 55.1-1819(C), as it expressly states, "**Before any action authorized by this section is taken**, the member shall be given a reasonable opportunity to correct the alleged violation ..."¹⁵ The next subsection then discusses the amount of the assessments and provides a cap for those assessments.¹⁶ It is unclear whether the bylaws or other governing documents set assessment schedules or how assessments may be collected. However, because this Office cannot interpret the bylaws of the Association, this Office finds that there is no violation of the POAA, other than what has already been determined in the preceding pages.

Finally, this Office wants to draw attention to the format and content of the Association's March 9, 2026, response, such that it is. Virginia law requires that a response to a common interest community complaint contain certain information.¹⁷ These enumerated requirements include that the NFAD must state that the Complainant may reach out to this Office for review and provide contact information for this Office, that the NFAD provide the appropriate statutes that were relied on in reaching a decision, and that the NFAD include the registration number of the Association.¹⁸ The March 9, 2026, NFAD by the Association was woefully inadequate, as it did not contain any of these requirements and fell well short of the type of complaint response that is essential to demonstrate good governance. This Office strongly advises that the Association Board review the requirements of 18VAC48-70-50 to ensure that it is complying with state law in how it responds to complaints made by Association members.

Conclusion

Based on the foregoing, this Office finds that the Association violated the notice requirements of the POAA, specifically Va. Code § 55.1-1819(C), because it did not provide the Complainant with adequate notice of the violation for which he was found in violation, prior to the hearing by the Association Board.

¹³ See Va. Code §55.1-1819(A); see also Va. Code §55.1-1819(B),

¹⁴ *Id.*

¹⁵ See Va. Code § 55.1-1819(C) (emphasis added).

¹⁶ See Va. Code § 55.1-1819(D).

¹⁷ See 18VAC48-70-50 (10)-(11).

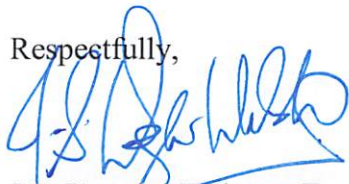
¹⁸ *Id.*

Required Actions

This Office strongly recommends that any fines association with the replacement of the fence violation be reimbursed to the Complainant by the Association within 30 days of the receipt of this decision, if that has not already occurred. Furthermore, if the Association believes that the Complainant's fence requires replacement, the Association must send the Complainant an enforcement notice that places the Complainant on adequate notice of what corrective action is being sought by the Association. This process must be in conformance with the provisions of the POAA as discussed above. Lastly, This Office further recommends that the Association Board review the requirements of 18VAC48-70-50 to ensure that it is complying with state law in how it responds to complaints made by Association members.

Please contact me if you have any questions.

Respectfully,



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