



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Abigail D. Spanberger  
Governor

Jessica K. Looman  
Secretary of Labor

Laura V. McClintock  
Director

May 28, 2026

Complainant: Robert Pickett  
Association: Unit Owners Association of the Hawthorn Condominium  
File Number: 2026-01045

## **DETERMINATION - NOTICE OF FINAL ADVERSE DECISION**

### Introduction

The Complainant, Robert Pickett ("Complainant"), submitted a complaint to the Board of the Unit Owners Association of Hawthorn Condominium ("Association"), dated June 24, 2025. The Association provided a response in the form of a Notice of Final Adverse Decision ("NFAD") to the Complainant's complaint, dated September 23, 2025. The Complainant then submitted the NFAD to the Office of the Common Interest Community Ombudsman ("Office") along with a letter, dated September 24, 2025. It was received by this office on September 25, 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 an 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 (“VCA”), the Property Owners’ Association Act (“POAA”), and the Virginia Real Estate Cooperative Act (“RECA”).

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.

#### Issue to be Decided

The Complainant presents a single allegation against the Association. As described more fully below, this single allegation concerns the procedural manner by which the Complainant’s June 24, 2025, complaint was disposed of by the Board.

The Complainant states to the in his letter to this Office that, “while I am basically satisfied with the corrective actions being taken by the Hawthorn in response to my association complaint, I do have concerns about the association’s use of an executive session to consider my complaint.”

This Office finds that the Complainant made no allegation of a violation of any Virginia common interest community statute to this Office, aside from that which the Association admitted to and has remedied, according to the Association’s NFAD of September 23, 2025. The Association determined that, based on the Complainant’s original complaint, the Association was out of compliance with the VCA, specifically Va. Code § 55.1-1945, related to the assessment of fees to a member’s observation of Association records.<sup>1</sup> As the Association has remedied the violation and the Complainant has not cited a statutory or regulatory violation related to the September 23, 2025 findings, this Office declines to comment further on that matter.

However, the Complainant states that he has “concerns” about the Association’s use of executive session to consider the Complainant’s complaint. Regardless of whether the Association should have discussed the Complainant’s original complaint in an executive session under the probable or pending litigation allowance as contemplated by the VCA, this issue is not ripe to be determined by this Office. The September 23, 2025, NFAD addresses the Complainant’s original complaints of June 24, 2025, which were related (as stated above), to the provisions of Va. Code § 55.1-1945. The Complainant’s concern of whether an executive session was appropriate to consider his complaint does not appear to have been made until the September 24, 2025, letter from the Complainant to this Office. The allegation was neither

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<sup>1</sup> See Va. Code § 55.1-1945.

considered by the September 23, 2025, NFAD nor is there evidence in the record that the Association was even made aware of this allegation on or before it issued the September 23, 2025, NFAD.

This Office does not have the authority under Virginia law to render a decision on a violation of the VCA that has not been the subject of an NFAD.<sup>2</sup> Therefore, the Complainant must file a complaint with the Association in accordance with the complaint procedure outlined in the Association's by-laws if he wishes to further pursue this allegation.

### Conclusion

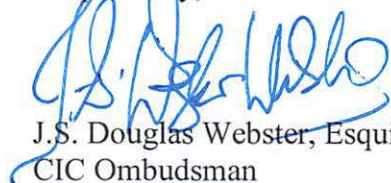
While we acknowledge the Complainant's concern, for the foregoing reasons, we find that the concern raised in the Complainant's September 24, 2025, letter to this Office is not yet ripe for determination by our Office, as the Association was not on proper notice of it.

### Required Actions

No action is required of the Association.

Please contact me if you have any questions.

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

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<sup>2</sup> See Va. Code § 54.1-2354.3.