



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

March 24, 2026

Complainant: Robert Pickett
Association: Board of Unit Owners Association of the Hawthorn Condominium
File Number: 2025-02388

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Robert Pickett, submitted a complaint to the Board of the Unit Owners Association of Hawthorn Condominium ("Association"), dated December 18, 2024. The Association provided a response in the form of a Notice of Final Adverse Decision ("NFAD") to Mr. Pickett's complaint, dated March 17, 2025. The Complainant then submitted the NFAD to the Office of the Common Interest Community Ombudsman along with a letter, dated March 27, 2025.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman ("CICO"), 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 very 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 three (3) allegations against the Association. The first allegation references the Association Meeting from March 17, 2025, which the Complainant alleges included an executive session in order to discuss the Complainant's original complaint to the Association, though the Complainant alleges that there was no probable or pending litigation from his complaint. The second allegation alleges that the Association did not adopt the Complainant's expressed language, which he sought as remedy for the Association's acknowledged violation of Virginia Code § 55.1-1949(C), which occurred on November 6, 2024. The third allegation concerns the Complainant's belief that minutes or notes exist from the executive session meeting of November 6, 2024, but have not been made available by the Association for inspection.

1. The Association Allegedly Violated the Virginia Condominium Act by Holding an Executive Meeting

The Complainant first contends that the Association violated the Virginia Condominium Act ("VCA") by holding an executive meeting on March 17, 2025, to discuss his original complaint related to the meeting of November 6, 2025. The VCA, in Va. Code § 55.1-1950(C), states that, among other reasons, the executive board may convene in an executive session in order to discuss "probable and pending litigation."¹

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 first issue is not ripe to be determined by the CICO. The March 17, 2025, NFAD addresses the Complainant's original complaints of December 18, 2024, which were related to the Association's executive session of November 6, 2024. The Complainant's allegation of this first issue does not appear to have been made until the March 27, 2025, letter from the Complainant to the CICO's Office. The

¹ Va. Code § 55.1-1950(C)

allegation was neither considered by the March 17, 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 March 17, 2025, NFAD.

The CICO does not have the authority under Virginia law to render a decision on an alleged violation of the VCA that has not been the subject of an NFAD.² 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.

2. The Association Allegedly Should Have Used Specific Language in its Disclosure of the Violation

The Complainant further alleges the Association failed to utilize specific language to remedy the admitted violation of the Association of Va. Code § 55.1-1949(C).

Whether the Association violated Va. Code § 55.1-1949(C) by having an executive session on November 6, 2024, to discuss budgetary items is not in dispute. In its March 17, 2025, NFAD, the Association admitted that it erred and stated that it submitted an apology letter to the owners of Hawthorn Condominium with the January 27, 2025, board meeting materials. The NFAD further stated that this issue was discussed during the Association meeting of January 27, 2025, and that the Board President issued a letter to the Hawthorn Condominium owners that the Board, "will be careful moving forward to ensure that only appropriate issues are discussed in Executive Session."

The Complainant requested that the Association remedy the violation of Va. Code § 55.1-1949(C) by the Association

Sending a written notice to all unit owners stating that the board's November 6, 2024, budget discussions were held in an improper executive session in violation of Section 55.1-1949 (C) of the Condominium Act.

There is no requirement that this specific language be utilized to remedy a violation of Va. Code § 55.1-1949(C), either in the statute itself or in the Regulations that govern Common Interest Communities in the Commonwealth of Virginia.³ There is no dispute by the Complainant that the Association undertook the actions that it claimed that it did in the March 17, 2025, NFAD. Furthermore, nothing appears to have prohibited any owner, including the Complainant, from further clarifying the nature and quality of the Association's violation during the board meeting of January 27, 2025.

Based on the totality of the circumstances, we find that while the Association admitted to a violation of Va. Code § 55.1-1949(C), there is no violation of the VCA specifically related to the Association's remedy and disclosure of the underlying violation.

² See Va. Code § 54.1-2354.3

³ See Va. Code § 55.1-1949; See also 18VAC48, et seq.

3. *The Association Allegedly Concealed Certain Documents from Inspection by the Complainant*

In his third allegation, the Complainant implies that the Association is concealing minutes or notes from the Association’s executive session meeting of November 6, 2024, which was held (as previously established and admitted to) in violation of Va. Code § 55.1-1949(C).

If true, such actions would constitute a violation of Va. Code § 55.1-1945(B), which provides in pertinent part, that except for certain exemptions provided by subsection (C): “all books and records kept by or on behalf of the unit owners' association ... shall be available for examination and copying by a unit owner in good standing ... so long as the request is for a proper purpose related to his membership in the unit owners' association ...”⁴

In its NFAD, the Association states that,

There were no minutes or notes taken during the November 6, 2025, Executive Session, other than changes made to the first draft of the budget. These changes have been shared with all owners. Further, the Board will provide the original draft budget provided by the fiscal management contractor to any owner who operates it.

This allegation is based on the Complainant’s allegation that the Association undertook an “in depth (line-by-line) review,” during the November 6, 2024, executive session. While there was an approval of the minutes for the November 6, 2024, “special meeting,” there is no evidence that these minutes are in any way different than the changes made to the first draft of the budget, as admitted to by the Association above. Other than the Complainant’s allegation, there is no substantive evidence in the submitted record that indicates the Association is holding additional minutes or notes from the November 6, 2024, executive session, which have not been presented for inspection. The Board has expressly denied that there are any notes or minutes beyond the notes made on the draft agenda, which were apparently shared with the Association members.

Because there is no information to suggest that the Association is withholding records it is keeping or maintaining from the Complainant, we cannot find that the Association has violated its duty to provide the Complainant with access to records it is keeping on behalf of unit owners regarding the operation and administration of the condominium.

Conclusion

While the CICO acknowledges the Complainant’s allegations and arguments the CICO, for the foregoing reasons, finds that this office cannot make a finding on an allegation upon which there is no NFAD rendered upon the issue. The CICO further finds that while Association violated Va. Code § 55.1-1949(C), it properly gave notice to its members of the violation and substantially remedied the

⁴ Va. Code § 55.1-1945(B)

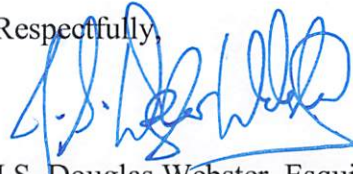
violation. Lastly, the CICO finds that there was not sufficient evidence to find a violation of Va. § 55.1-1945(B), as there was no documentary evidence to conclude that the Association was concealing notes or minutes that it had in its possession from the November 6, 2024, executive session.

Required Actions

No action is required of the Association.

Please contact me if you have any questions.

Respectfully,



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