



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

May 29, 2026

Complainant: David Whidden
Association: Harbour Pointe Homeowners Association
File Number: 2026-01331

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, David Whidden ("Complainant"), submitted a complaint to Harbour Pointe Homeowners Association ("Association") dated September 2, 2025. The Association provided a response to Complainant's complaint dated October 11, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated October 24, 2025, and the NFAD was received by our Office on October 30, 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.

Issue to be Decided

The Complainant presents one allegation against the Association. As described more fully below, the allegation concerns an executive session that the Association Board understood related to a personnel matter. The Complainant argues that since the Association has no paid employees, it could not meet in executive session to discuss a personnel matter. This is discussed in more detail below.

1. *The Complainant Alleges that the Association Held an Executive Session during a Board Meeting to Discuss a Personnel Matter, in Violation of the Virginia Property Owners' Association Act ("POAA"), Specifically Va. Code § 55.1-1816.*

The Complainant contends that the Association violated the POAA because it held an executive session to discuss personnel matters, even though the Association had no paid employees. The evidence shows that an executive session was held during the Association Board meeting of August 16, 2025, and the stated reason was "to discuss personnel matters." The meeting minutes of the August 16, 2025, Association Board meeting indicate that the Board retired to executive session, "to discuss officer positions."

Pursuant to Va. Code § 55.1-1816(C)

The board of directors or any subcommittee or other committee of the board of directors may (i) **convene in executive session to consider personnel matters**; (ii) consult with legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of

directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law. (Emphasis Added).¹

To bolster his argument, the Complainant also cites two previous decisions of this Office, one from 2012, and one from 2015. Unfortunately, these decisions were not provided in their entirety, and this Office no longer has copies of them, as they were disposed of five years after the decision date, in compliance with the Library of Virginia Record Retention and Disposal Schedule, Schedule 222-001.² That said, decisions of this Office are not precedential, so these would not be binding on the instant case, though they may have been persuasive.

The NFAD from the Association, dated October 11, 2025, does not deny that the executive session for a “personnel discussion,” that occurred during an organizational meeting following the annual election. The NFAD does not dispute that the Association has no paid members. Rather, the NFAD states that the Ombudsman has opined that discussions about the selection of officers may fall into the category of personnel discussions, and as it is not expressly defined in the statute, the actions of the Association were consistent with the law of the Commonwealth. As with the Complainant, the Association has provided no specific full decision of this Office to support that claim and it appears that in looking through the prior five years, which is the retention schedule period, this opinion and/ or decision was made prior to the five year retention period.³

The Association is correct, in that there is no definition of “personnel” in the POAA, and as such, there may be a difference of opinion as to the bounds of what should be allowed in an executive session under Va. Code Va. Code §55.1-1816(C).⁴ In order to ascertain whether “personnel,” should refer to only paid employees as the Complainant contends, or to unpaid directors as the Association contends, we turn to analogous case law concerning the Virginia Freedom of Information Act (“FOIA”).⁵

Virginia FOIA has open meeting requirements and similar terms to that of the POAA.⁶ Thus, interpretation of Virginia FOIA can be persuasive in filling gaps where Common Interest Community case law has yet to delve. As with FOIA, the goal of the POAA is to give Association Boards a framework to conduct their business transparently since the Membership is to be the beneficiary of any action taken by an Association Board. Still there are times where privacy is needed when discussing confidential matters, such as a personnel matters.

The question remains- what does “personnel” mean? In the context of Virginia FOIA, the Virginia Supreme Court has addressed this very issue in the 2022 case of *Hawkins v. Town of South Hill*, which

¹ Va. Code § 55.1-1816(C).

² See Library of Virginia Records Retention and Disposition Schedule, Schedule #222-001, DPOR, Effective Date December 11, 2025.

³ *Id.*

⁴ See Va. Code §55.1-1800; see also Va. Code § 55.1-1816.

⁵ See Va. Code §§ 2.2-3700 through 2.2-3715.

⁶ *Id.*

concerned the production of documents related to employment disputes.⁷ In that case, Justice Mann acknowledges the various plain language definitions of “personnel” but then settles on a final definition that in the context of Virginia FOIA, personnel refers to “a body of persons employed in some service or government employee.”⁸ Furthermore, the plain language definition of “personnel” refers to “a body of persons usually employed (as in a factory or organization).”⁹ We believe that, like with Virginia FOIA, employment status and the various specific subject matters within the employment lifecycle (hiring, termination, promotion, salary, etc.) are essential components necessary for an Association Board to enter into an executive session, outside the sunshine the open meeting provides, pursuant to Va. Code § 55.1-1816(C).¹⁰

Non-Employee Board members of the Association do not have the same employment lifecycle stations as personnel, and thus, it is not appropriate to utilize executive session to discuss matters pertaining directly to them.¹¹ However, there might be cases where the provisions of Va. Code § 55.1-1816 may be pre-empted by the specific privacy provisions of other state and federal statutes or regulations, and the Association should be sensitive to that interplay and not be afraid to engage with counsel in those rare circumstances. Absent that narrow caveat, the law governing common interest communities intends that Board actions, such as actions related to elections, be conducted in the sunlight. Thus, in the instant case, while we acknowledge the argument of the Association, entering into an executive session to discuss personnel matters should be related to individuals employed by the Association in order to be compliant with Va. Code § 55.1-1816(C).

Conclusion

Based on the foregoing, it is the finding of this Office that discussion of non-paid Board officers by the Association in executive session is contrary to the spirit of the POAA, specifically Va. Code § 55.1-1816(C). With that said, this Office does not believe that the Association acted in bad faith when it retired to executive session in order to discuss the selection of Association Board officers, given the ambiguity of the statute and the dearth of definitions contained within the POAA. Thus, this Office only reminds the Association that it must comply with the executive session provision of Va. Code § 55.1-1816(C).

Required Actions

It is strongly recommended that each director of the Association Board be given a copy of this decision to provide them with adequate notice of the parameters that should be considered, prior to entering into executive session to discuss personnel matters, pursuant to Va. Code § 55.1-1816(C).

⁷ See *Hawkins v. Town of South Hill*, 878 S.E.2d 408 (2022).

⁸ *Id.* at 415.

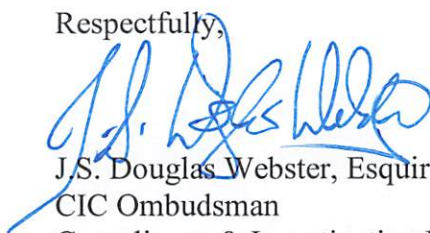
⁹ *Personnel*, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/personnel> (last visited May 28, 2026).

¹⁰ See Va. Code § 55.1-1816(C).

¹¹ This Office acknowledges that the Virginia Nonstock Corporation Act (“VNCA”) does define employee as a “an officer but not a director” under Va. Code § 13.1-803. However, the VNCA is not a common interest community statute or regulation, and there is no evidence that the Virginia General Assembly ever intended that definition to apply to the term “personnel” as utilized in Va. Code § 55.1-1816(C).

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