



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Abigail D. Spanberger
Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

August 18, 2026

Complainant: Jennifer Rekas
Association: Hickory Cluster Association
File Number: 2026-03668

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Jennifer Rekas ("Complainant"), submitted a complaint to Hickory Cluster Association ("Association") dated March 24, 2026. The Association provided a response to Complainant's complaint dated May 27, 2026. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated June 10, 2026, and the NFAD was received by our Office on June 18, 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 ("VCA"), the Virginia Property Owners' Association Act ("POAA"), and the Virginia Real Estate Cooperative Act ("VRECA").

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

The Complainant presents a single allegation. She alleges that the Association Board has been improperly utilizing executive sessions for business that should be held in an open forum, in violation of the POAA, specifically Va. Code § 55.1-1816. This is explained in further detail below.

- 1. Did the Association Board discuss non-permitted topics in executive session, in violation of Va. Code § 55.1-1816?*

The Complainant contends that the Association Board violated Va. Code § 55.1-1816 of the VCA when it conducted executive sessions outside of the executive session requirements set forth in Va. Code § 55.1-1816(C). To support this, the Complainant submitted meeting minutes from several board meetings.

Under Va. Code § 55.1-1816(C)

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.¹

Any discussion that does not involve the above enumerated topics must be discussed in open session, as meetings must be open to all members of record.²

Personnel Matters

The Complainant listed several instances in which matters were improperly categorized as personnel matters. In the June 18, 2025, Association Board meeting, the Association Board moved into executive session in order to discuss personnel matters and discussed the Association Board officer election and leadership roles, as well as “IT systems management.” The July 16, 2025, meeting also made reference to an executive session discussion under personnel matters exception to discuss IT management updates, as well as a Board vacancy and individual roles for the Board. The August 20, 2025, meeting moved into executive session under the personnel exception in order to discuss Board vacancies. The October 15, 2025, meeting moved into executive session under the personnel exception in order to discuss Board vacancies and a need to change the time of the next meeting. The November 12, 2025, meeting moved into executive session under the personnel exception in order to discuss “RA DRB applications ongoing issues regarding full board notification and agreement before any HCA officer signature.” And finally, the January 21, 2026, meeting moved into executive session under the personnel exception in order to discuss a Board director’s reimbursement request for printer ink and paper, which was agreed to.

In its response, the Association acknowledged that Board resignations, reimbursements of director expenditures, and open Board positions are not personnel matters, but it contends that no votes were made on the subject. Furthermore, the Association acknowledged that bylaw amendments and the upgrading of IT systems are not personnel matters either.

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 §55.1-1816(C).³ In order to ascertain whether “personnel,” should refer to unpaid directors as the Association contends, we turn to analogous case law concerning the Virginia Freedom of Information Act (“FOIA”).⁴

Virginia FOIA has open meeting requirements and similar terms to that of the POAA.⁵ 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.

¹ Va. Code § 55.1-1816(C).

² See Va. Code § 55.1-1816(A).

³ See Va. Codes § 55.1-1800; see also Va. Code § 55.1-1816.

⁴ See Va. Codes §§ 2.2-3700 through 2.2-3715.

⁵ *Id.*

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 concerned the production of documents related to employment disputes.⁶ 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.”⁷ Furthermore, the plain language definition of “personnel” refers to “a body of persons usually employed (as in a factory or organization).”⁸ 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).⁹

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.¹⁰ However, we also recognize that 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 and leadership positions, be conducted in the sunlight. Thus, in the instant case, while we acknowledge the argument of the Association, entering 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).

As the Association points out in its response, the Association Board conducted numerous actions in executive session under the personnel matters exception of Va. Code § 55.1-1816(C) that were contrary to the POAA, including discussions of Board vacancies, discussions of IT management systems, discussions of reimbursements, Board meeting times, and Board notifications. It appears that with respect to the reimbursement, a vote was taken in executive session to approve that reimbursement, which is contrary to the POAA.¹¹

Compliance

There is no specific allowance under the POAA for an Association Board to retire to executive session in order to discuss “compliance matters.”¹² With that said, there is an exception to discuss violations of the declaration of rules and regulations or to discuss and consider the personal liability of

⁶ See *Hawkins v. Town of South Hill*, 878 S.E.2d 408 (2022).

⁷ *Id.* at 415.

⁸ *Personnel*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/personnel> (last visited July 9, 2026).

⁹ See Va. Code § 55.1-1816(C).

¹⁰ 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).

¹¹ See Va. Code § 55.1-1816(C).

¹² *Id.*

members to the association.¹³ As was the case above, the Complainant identified several instances in which she believes this closed session topic was misused:

- The July 18, 2025, Association meeting moved into executive session under a “compliance” heading to discuss several individual applications for HVAC equipment installation, and design review board application for front exterior and rear interior repairs.
- The July 16, 2025, meeting moved into executive session under a “compliance” heading to discuss several individual property cases, including the prototyping of a standard HVAC common area, an HVAC installation, and pend a design review board request for more information.
- The August 20, 2025, Association meeting moved into executive session under a “compliance” heading to discuss several individual property cases, including a proposed exterior column and beam repair, a need to pend a proposed application for additional information, a proposed HVAC common area visual and acoustical screen designed and built by a member of the Association Board, and proposed HVAC equipment approval.
- The September 17, 2025, Association meeting moved into executive session under a “compliance” heading to discuss several “condition corrections,” and also several individual property cases, involving responding to a contractor request, HVAC equipment installation, and rear entry door application.
- The October 15, 2015, Association meeting moved into executive session under a “compliance” heading to discuss condition corrections, code compliance, an approved door installation, HVAC installations, and legal/ rules problems regarding resale transactions.
- The November 12, 2025, Association meeting moved into executive session under a “compliance” heading to discuss HVAC installations, a resale application request, and a non-compliance issue related to a 2018 resale.
- The December 17, 2025, Association meeting moved into executive session under a “compliance” heading, to discuss individual property resale issues, approve a sound limit change from 70 dbA to 72 dbA, and HVAC installations. The Association also discussed

¹³ *Id.*

the President attending a recent design review board hearing at Vantage Hill, where they were reviewing air-conditioning options.

- The January 21, 2026, Association meeting moved into executive session under a “compliance heading,” to discuss individual property HVAC installations, rooftop installations, a general discussion on HVAC cluster standards updates, HVAC easements, and HVAC applications processes.
- The February 18, 2026, Association meeting moved into executive session under a “compliance heading,” to discuss individual property HVAC applications, but then also voted on HVAC standards, and also discussed HVAC meetings, HVAC approvals, and HVAC easements.
- The March 18, 2026, Association meeting moved into executive session under a “compliance heading,” to discuss general HVAC application standards and compliances, and the Directors agreed to a process for review. The Association also considered several individual property HVAC installation applications.

The Association responded that the Reston Association, the Master Association for the Association, treats design review board application submissions by Association homeowners as confidential until the application gets to the design review board hearing stage. The Association argues that it is merely following the Reston Association procedures on how these applications are treated. The Association also cites Va. Code §55.1-1815, regarding the confidentiality of member files, to bolster its claim.

The first concern from this Office is related to how this executive session is described in the minutes, pertaining to “compliance” matters. Any executive session should be entered into with the Association Board explaining to the members under which provision of Va. Code §55.1-1816(C) the Association is using to enter into executive session. Mere “compliance” is not sufficient. Several of these “compliance related” matters are not related to specific violations of the declaration or rules and regulations, seeking legal advice, or discussion of the potential liability of Association members.¹⁴ Contained within the meeting minutes are numerous examples of general conversation regarding individual property installation requests that have no evidence of a violation attached to it. There is also additional discussion among the members of a general nature, which does not appear to reference any specific property regarding a violation of rules or regulations, or any sort of liability. Even more egregious, agreements or votes appear to be taking place in these closed-door sessions regarding such things as sound limits within the community and HVAC application standards.¹⁵ This closed session voting is tacitly admitted to by the Association response.

¹⁴ *Id.*

¹⁵ Note: The January 8, 2026, special meeting also has numerous decisions made under an agenda item generally marked as “Executive Session,” with Association Directors rendering several decisions, including related to HVAC standards, allowing

With respect to the individual design review board applications being reviewed in executive session, the Association argues that it is only doing what the Reston Association requires. It also appears to argue that because these applications are related to an individual member, the discussion should be confidential, as the books and records of individual member files are.¹⁶ While we acknowledge these arguments, design review applications are not enumerated in Va. Code § 55.1-1816(C), unless they somehow overlap with one of the enumerated allowances for an executive session. Furthermore, while the POAA allows for individual lot owner or member files to be exempt from record production, there is no such confidentiality assurance for the Association Board to discuss a member's design review board submission, and this is especially important in light of the Association Board taking a position on it during the executive session. Had the General Assembly intended to make these design review board considerations confidential, it would have done so by enumerating that confidentiality within the bounds of Va. Code § 55.1-1816(C). As a result, we decline to do so here. As the Board has reviewed and considered design review board applications from individual members in executive session without any other approved reasoning for having done so under Va. Code § 55.1-1816(C), the Association violated the POAA.

It appears that there are numerous violations of the POAA in the executive sessions labeled "compliance" in the minutes.¹⁷ We would remind the Association that in a meeting, they need to tell the general membership why they are entering into an executive session and state an enumerated reason for doing so. Upon entering executive session, the Association needs to rigidly stick to the reason behind having entered the lawful executive session and avoid deviating into more general or tangential matters. Upon leaving the executive session, if a vote is required, the Association Board shall vote in open session or explain to the general membership that no vote is necessary or required.

Legal Matters

Consultation with legal counsel and discussion of matters pertaining to pending or probable litigation are among the enumerated reasons under Va. Code § 55.1-1816(C) allows an Association Board to enter into an executive session. The Association utilized this exception on several occasions, the following of which the Complainant takes issue with:

- The July 16, 2025, Association meeting moved into executive session under a "legal" heading in the minutes in order to discuss a Reston Association covenants letter that resulted from a previous Board's non-compliance with approved design review board tree removal vegetation planning requirements.

certain easement exceptions, and requiring members to pay common areas easement legal recording fees. None of this appears to have been voted on in an open session of the Association Board.

¹⁶ See Va. Code § 55.1-1815(C)(9).

¹⁷ See Va. Code § 55.1-1816(C).

- The August 20, 2025, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss the previously mentioned Reston Association non-compliance letter, and a Fairfax County complaint.
- The September 17, 2025, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss the previously mentioned Reston Association non-compliance letter, Fairfax County Code Compliance, and an attorney consultation regarding a trip hazard removal easement agreement, an HVAC easement, and retaining wall issues.
- The October 15, 2026, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss that legal counsel finalized the trip hazard easement agreement.
- The November 12, 2025, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss the trip hazard easement agreement, and to discuss a proposed filing of a formal Virginia State Corporation Commission (“SCC”) utility abandonment complaint on behalf of the Association membership. However, a majority of Association Directors opposed.
- The December 17, 2025, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss the receipt of the trip hazard agreements from the affected members, the creating of hearing notification letters for “overdue members,” and the resolving of prepaid accounts.
- The January 21, 2026, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss improperly listed Association Board members on the 2024-2025 Federal income tax draft.
- The February 18, 2026, Association meeting moved into executive session under a “legal” heading in the minutes in order to discuss engaging legal counsel to draft a certified letter to the remaining member who has not signed the trip hazard easement agreement.
- The March 18, 2026, Association meeting moved into executive session under a “legal counsel” heading in the minutes in order to discuss the updating of easement agreement elements, their associated fees for legal work, and discussion with counsel of member pre-payment of HVAC expenses into an escrow account before HVAC installation occurs.

In its response, the Association stated that it agreed that counsel was not present for the discussion on correcting the Association's tax returns for 2024-2025, and therefore, the Association should not have convened an executive session. However, the Association has stated that the tripping hazard matter did involve discussion and advice of legal counsel regarding the need for easements. Furthermore, the Association responded that the SCC matter involves possible litigation, which meets the requirements of an executive session under Va. Code § 55.1-1816(C).

Based on the information in the record, and the admission by the Association, we find that there is a POAA violation concerning the correction of the Federal tax return. However, this Office does not have sufficient information to indicate that there is any other misuse of the consultation with legal counsel or pending or probable litigation allowances for executive session under Va. Code § 55.1-1816(C).¹⁸

With that said, we do want to remind the Association that when they utilize the legal counsel exception, they must have legal counsel present to actually provide advice on the matter. Furthermore, moving into executive session regarding pending or probable litigation should only have discussion in the executive session related to the pending or probable litigation. Furthermore, it appears that these two executive session allowances were combined in the meeting minutes. It is important for transparency's sake that the membership understands at the outset verbally and later reflected in the minutes, what exception is being invoked to convene an executive session under Va. Code § 55.1-1816(C).

Contracts

Discussion of contracts is among the enumerated reasons under Va. Code § 55.1-1816(C) allows an Association Board to enter into an executive session.¹⁹ The complainant listed the following instances in which she believes the Association violated this provision of the POAA:

- The July 16, 2025, Association meeting moved into executive session under a "contracts" heading in the minutes in order to discuss the common area vehicle towing agreement and related authorization information.
- The August 20, 2025, Association meeting moved into executive session under a "contracts" heading in the minutes in order to discuss the safer sidewalks proposed contract, as well as to discuss bamboo removal, the proposed update to the reserve study including storm water management system review and remediation. The Association Board also discussed and agreed to a snow removal contract, agreed to request a bark scale infection proposal, and agreed to follow up regarding the retention of a consulting arborist.
- The September 17, 2025, Association meeting moved into executive session under a "contracts" heading in the minutes in order to discuss the postponement of the trip hazard

¹⁸ *Id.*

¹⁹ *Id.*

removal work, the Association reserve study update, and a proposal to treat bark scale infection on Crape Myrtles.

- The October 15, 2025, Association meeting moved into executive session under a “contracts” heading in the minutes in order to discuss the repair easement agreement, to request a consulting arborist risk assessment proposal, and to forward to the Association Board a proposal to be decided on by the next meeting.
- The November 12, 2025, Association meeting moved into executive session under a “contracts” heading in the minutes in order to discuss the failure of the Directors to sign any 2024-2025 audit proposal. The Association Board also approved and agreed to sign a single contractor for grounds maintenance and snow removal proposal.
- The December 17, 2025, Association meeting moved into executive session under a “contracts” heading in the minutes in order to discuss and agree that a pending FEA Reserve Study should include clusterwide storm water management and drainage. The 2026 grounds maintenance and snow removal contract removed liriopie mowing and trimming and discontinue all leaf blowing behinds Blocks 1/2/3,
- The January 8, 2026, Association meeting moved into executive session under a “contracts” heading in the minutes in order to discuss a retaining wall proposal bid comparison sheet, to discuss the grounds maintenance and snow removal contract terms, to discuss a tree management survey and contract, and to discuss the last unsigned executed easement agreement.
- The February 18, 2026, Association meeting moved into executive session under a “contracts” heading in the minutes in order approve a contract proposal for the retaining wall, to discuss an emergency snow removal contract, to discuss an update on the trip hazard easement agreement, and to discuss elements of the reserve study, and to discuss the last unsigned executed easement agreement.

- The March 18, 2026, Association meeting moved into executive session under a “contracts” heading in the minutes in order to discuss pending contract status update on the retaining wall contract and that the contract start is pending Abaris’s contract execution. The Association Board also discussed pending contract updates and status for grounds maintenance, pending contract updates and status for the tree management contract, and pending contract updates and status for the trip hazard easements.

In its response, the Association acknowledged that the vote on the snow removal contract should have occurred in an open session of the Association meeting. However, it believes that the snow removal discussion was appropriate in executive session under Va. Code § 55.1-1816(C). The Association further stated that the retaining wall proposal dealt with pending proposals and bid comparison sheets for repair and/ or replacement of the retaining wall and were appropriate for executive session under Va. Code § 55.1-1816(C). The Association further stated that there was additional discussion with counsel on this matter, which was also appropriate under Va. Code § 55.1-1816(C). The Association also stated that the Association was obtaining proposals for tree and landscaping services and discussing what the scope of services should be and therefore, the Association’s position is that they are covered under Va. Code § 55.1-1816(C). However, the Association admits that it unlawfully voted in closed session.

Lastly, the Association stated that with respect to the reserve study, there was “some discussion related to the need to update the current reserve study and obtain a proposal for the same.” The Association believed that these discussions fall under the contract discussion provisions of Va. Code § 55.1-1846(C).

This Office interprets Va. Code § 55.1-1816(C) far more narrowly than the Association does. The responses by the Association, compared to what was reported in the various meeting minutes submitted by the Complainant gives this Office concern that the Association believes that, so long as there is some tangential contract-related discussion, the Association is free to utilize the executive sessions to conduct Association business in an opaque manner. Va. Code § 55.1-1816(C) authorizes the Association Board to convene an executive session to “discuss and consider contracts.”²⁰ For Va. Code § 55.1-1816(C) to be utilized, the Association Board must have a contract in-hand, or certainly contractual terms that will be memorialized into a contract in the near future. The Association cannot use an executive session to talk about the possible need for a contract (unless this is a question presented to counsel for advice), opine about whether a request for proposal should be published (i.e., defining the scope of services, etc.), or speak about what the next steps are to work on its reserve study because it might involve the need to request a proposal later.

These kinds of discussions are clear examples where the Association has violated the POAA.²¹ When combined with the admitted voting in the executive session, outside of the open meeting forum, it is clear that this Association violated the POAA and utilized the executive sessions improperly to discuss matters outside the specifics of a finite contract and/or its terms.

Conclusion

²⁰ See Va. Code § 55.1-1816(C)

²¹ *Id.*

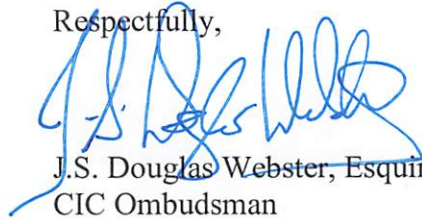
Based on the foregoing, we find that the Association has a sustained pattern of acting contrary to the POAA, Va. Code § 55.1-1816(C), with respect to its convening of executive session and discussing matters that are not specifically listed within the confines of Va. Code § 55.1-1816(C). Furthermore, the Association violated Va. Code § 55.1-1816(C) when it held votes in executive session rather than in the open meeting forum.

Required Actions

Within 30 days of receipt of this decision, this Office finds that the Association should ratify every vote that was taken in executive session from July 16, 2025, to present, by voting on those provisions again in an open meeting. Within 60 days of receipt of this decision, the Association Board shall complete training with counsel on when and how to convene executive sessions.

Please contact me if you have any questions.

Respectfully,



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