COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

Jessica K. Looman
Secretary of Labor

Laura V. McClintock
Director

July 6, 2026

Complainant: Eleanor Loos and Susan McCormick
Association: Celebrate by Del Webb Community Association, Inc.
File Number: 2025-02311

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

On March 18, 2025, the Office of Common Interest Community Ombudsman ("Office") received a Final Adverse Decision complaint from Eleanor Loos and Susan McCormick (collectively, the "Complainants") for review. The Notice of Final Adverse Decision ("NFAD") is based on the Complainants' allegation that Celebrate by Del Webb Community Association, Inc. ("Association"), through its Board of Directors ("Board"), is not acting in compliance with the applicable CIC laws or regulations. The named association is subject to the Property Owners' Association Act ("POAA"). The Board issued a final decision on February 25, 2025. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

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 CIC 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 CIC 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 CIC 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 Complainants raise the following two issues in their complaint, specifically that the Board: (1) is not complying with the provisions of the open meeting statute regarding executive sessions; and (2) that the governing board is not taking minutes of discussions held in executive sessions. The Office's determination for these enumerated above are discussed below individually.

1. Is the Board Properly Utilizing the Executive Sessions Provisions of the POAA?

In general, the POAA provides that, "[a]ll meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record."[1] The POAA recognizes, though, that there instances in which the governing body may need to meet privately to discuss sensitive or confidential matters. Thus, the POAA allows governing bodies to meet in an executive session for four types of matters: (1) personnel matters; (2) consultation with legal counsel; (3) discussion and consideration of contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations of the association; and (4) discussion and consideration of the personal liability of members to the association.[2]

To properly enter into an executive session, the governing body must have a vote in the affirmative to enter into an executive session and must expressly identify which of the specific permissible purpose(s) to be discussed in the executive session.[3] Further, the governing body is only allowed to discuss the matters that were specifically identified in the motion for the executive session.[4] Further, any action, e.g., contract approval, motion, or other action, that stems from the executive session "shall not become effective unless governing body, following the executive session, reconvenes in an open meeting and takes a vote on such action, which shall have its substance reasonably identified in the open meeting."[5]

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[1] *See*, Va. Code § 55.1-1816(A).
[2] *See*, Va. Code § 55.1-1816(C).
[3] *Id.*
[4] *Id.*
[5] *Id.*

Here, the Complainants assert that, during at least some meetings, the Board is identifying multiple purposes for executive sessions and then makes either no motions or less motions than the purposes stated, leaving open the question of whether some purposes were identified even though there was no related open meeting action. The complainants further assert that the Board is discussing matters in executive session that more properly should be discussed in the open meeting portion of the meeting. For example, the complainants believe that in one instance – adding an additional vendor employee to their community – should have been a discussion in open session. The Complainants acknowledge that if the decision was to move forward with this, then the personnel provision would be appropriate to discuss the particular person to be added.[6] The Board, in its final decision, stated that in reviewing the Complainants' information, the Board "refer[ed] to one or more of the topics listed in the [POAA] as the reason for entering executive session."[7]

In this matter, it is difficult for the Office to determine whether the Board has acted in compliance with the POAA's executive session provisions because it is not privy to the topics that were actually discussed during the executive sessions in question. Nor should it be. The POAA's provisions clearly seek to strike a reasonable balance between allowing a governing body to have sensitive and/or confidential discussions on limited topics in private and ensuring that association members are sufficiently informed by governance that is in the open.

Here, and on this topic in general, this Office determines that as long as the purposes given for an executive session are actually discussions held in the executive session, then governing bodies are in compliance with the POAA. However, when a governing body states purposes for executive session for which there will be no actual discussions, the governing body is not complying with the POAA. In the instant case, based on the information that is contained in the record, we cannot say that the POAA was violated by the executive sessions cited. With that said, the Association is cautioned that it should only discuss topics in executive session that have a nexus with the enumerated executive session topics, contained in Va. Code § 55.1-1816(C). **When governing bodies elect to deal with multiple topics as once in an executive session, it is further recommended that, as a best practice, the governing bodies, once out of closed session, identify the topic(s) for which a motion was made and then conduct that process in open session. For any topic for which there was no motion or action, the Association may wish to expressly state that there was no motion and/ or action to ensure that there is full transparency for those in attendance and for those Association members who will review the minutes of the meeting.**

2. *Is the Board's Failure to Record Minutes of Executive Sessions Compliant with the POAA?*

The second issue raised by the Complainants concerns an allegation that the Association Board fails to take minutes of its executive sessions, which the Complainants believe is not compliant with Va. Code § 55.1-1816 (A). This is admitted to by the Association in its NFAD, as it believes that its failure to take minutes is compliant with the POAA.

Va. Code § 55.1-1816 (A) states

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[6] *See*, Email from Complainants to Board, April 7, 2024.
[7] *See,* Board Final Determination, Feb. 24, 2025, at p. 2.

> All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted, shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.[8]

However, an executive session is a carve-out of the general meeting requirements to which the Association is subject in Va. Code § 55.1-1816, and the executive session is permitted to be closed to the general membership, provided one of the enumerated subject matter conditions are met.[9] While it may be best practice to have some confidential record of what occurs in an executive session (which may be dependent on the subject matter), there is no specific requirement for executive sessions to record minutes in the POAA, only that reference to the motion and the stated purpose for the executive session should be included in the minutes of the full board meeting.[10] It is also worth pointing out that, even if the Associartion Board executive sessions in this case had recorded minutes, due to the confidential nature of the subject matters that are lawfully allowed to be discussed therein, the Complainants would not be able to view them. Based on the evidence in the record, we find that there is no requirement under Virginia law that requires that the Association keep minutes of executive sessions, and thus, the Association and Board have not violated the POAA. As we point out above, though, the Association may want to ensure that, when it exits an executive session, it identifies whether a motion related to a topic(s) that were discussed is needed, and if not, that no further board action is required for such topic(s).

Conclusion

Based on the foregoing, this Office finds that there is no evidence that Association violated the Virginia POAA with respect to the subject matters discussed in the executive sessions of the Board. This Office further finds that the Board is not required to keep minutes of executive sessions under the Virginia POAA.

Required Actions

In order to promote transparency and demonstrate compliance with § 55.1-1816, we suggest that the Association's motions to go into executive session should be intentional in order to make it clear to the Membership what enumerated reason under the POAA they are evoking to go into executive session and to only to use an executive session topic if there will be an actual discussion held under that topic.

Please contact me if you have any questions.

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[8] Va. Code § 55.1-1816 (A).
[9] *See* Va. Code § 55.1-1816 (C).
[10] *See* Va. Code § 55.1-1816.

Respectfully,

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