



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

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Secretary of Labor

James B. "Jeb" Wilkinson, Jr.  
Director

October 30, 2025

Complainant: Gregory C. Whetzel  
Association: Park Ridge Development of Floyd and Franklin Counties, Inc. (POA)  
File Number: 2025-02308

## OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSMAN DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

### Introduction

On March 18, 2025, the Office of Common Interest Community Ombudsman ("Office") received a Notice of Final Adverse Decision ("NFAD") from George C. Whetzel ("Whetzel" or "Complainant"). The NFAD is based on Whetzel's complaint to the board of directors for Park Ridge Development of Floyd and Franklin Counties, Inc.<sup>1</sup> ("Board") on October 23, 2024. The Board issued a final decision on February 17, 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.

### Issues Raised

The Complainant raises a single issue in the complaint, specifically that the Board is not complying with the statutory provisions of § 55.1-1816 of the Code of Virginia of 1950, as amended ("Va. Code") with regard to meetings conducted by the Board. In addition, our review of this complaint found deficiencies in the Board's final decision. The Office addresses these issues below.

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<sup>1</sup> This is the legal name for the association, which also has two fictitious names registered with the State Corporation Commission: Park Ridge Development (Franklin Co.) and Park Ridge Development, Inc. Homeowners' Association (Franklin Co.)

## **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.”<sup>2</sup> The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with Va. Code §54.1-2354.4 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 Va. Code and Regulations, must concern whether a decision by the governing board, managing agent, or association conflicts with the “laws or regulations governing common interest communities.”<sup>3</sup>

Common interest community laws are limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act. Because “laws or regulations” pertain solely to the foregoing laws and the regulations of the Common Interest Community Board’s regulations, the NFAD process is not the forum for raising challenges to an association board’s interpretation, action, or inaction under their governing documents. Any complaint that does not concern common interest community laws or Regulations is not appropriate for submission through the association complaint procedure, and this Office will not provide a determination on such a complaint.

The only documents that will be considered when reviewing an NFAD 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.<sup>4</sup> 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.<sup>5</sup>

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 determination of the Office is discussed more fully below and is based on a review of the materials submitted with the NFAD. In addition to the single issue raised, the Office noted deficiencies in the Board’s final decision. Each section will address whether the Board’s actions

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<sup>2</sup> See, 18 VA. ADMIN. CODE § 48-70-120.

<sup>3</sup> See, Va. Code § 54.1-2354.3(B) and 18 VA. ADMIN. CODE § 48-70-120.

<sup>4</sup> See, 18 VA. ADMIN. CODE § 48-70-90.

<sup>5</sup> See, Va. Code § 54.1-2354.4(C).

conflict with the applicable common interest laws or regulations, in this case, the Virginia Property Owners' Association Act ("POAA").

*1. Requirements for conducting meetings by the association's board of directors.*

Here, the Complainant asserts that the Board is failing to comply with the POAA's requirements for allowing association members to receive notice of and to attend meetings by the Board. 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."<sup>6</sup> Pertinent to this determination, the POAA further provides that "[t]he 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."<sup>7</sup> Unit owners further have the "right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816."<sup>8</sup>

Specifically, the Complainant alleges that the Board's use of "pre-meetings" is a violation of the POAA's meeting provisions. Further, Whetzel contends that the Board should not use "pre-meetings" as a way to have closed deliberations regarding association matters but instead must use executive (closed) sessions only as provided by the POAA. When it comes to executive sessions, the POAA specifies both the reasons executive sessions are permitted and the mechanics for going into, coming out of, and noting the executive session in the Board's meeting minutes.<sup>9</sup>

In its final decision, the Board denied that its actions were in violation of the POAA. The Board stated that it "**meets** one hour prior to the monthly board meeting in the office to assess if there are any additional issues that need to be added to the agenda and to hand out any documents associated with the agenda items."<sup>10</sup> Further, "during this time, the directors have the time to review the documentation provided for any agenda item(s) prior to the open Board of Directors meeting."<sup>11</sup>

The Board's letter clearly demonstrates that the Board's "pre-meetings" are in violation of the POAA's provisions. The "pre-meeting" is gathering of the board to discuss the agenda, additional issues, while reviewing agenda documents, all of which are conducting the business of the association as a collective board. This Office finds that such gatherings constitute "work sessions or other information gatherings of the board" that serve "to circumvent the open meeting requirements of 1816(A)." While this may have been inadvertent, it is equally improper and prohibited by the POAA. Further, since association members evidently were not provided with notice and the opportunity to

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<sup>6</sup> See, Va. Code § 55.1-1816(A).

<sup>7</sup> *Id.*

<sup>8</sup> See, Va. Code § 55.1-1807(3).

<sup>9</sup> See, Va. Code § 55.1-1816(C).

<sup>10</sup> Board's Decision letter dated Feb. 17, 2025 (Emphasis added).

<sup>11</sup> *Id.*

attend these “pre-meetings,” the Board’s actions run afoul of the meeting and notice rights provided to association members by the POAA.<sup>12</sup>

Complying with the POAA’s provisions is not meant to be burdensome on the volunteers who devote their time to assist with the governance of their community, but the provisions do require a balance of commitments for those who govern and who are governed by associations. There are certainly no prohibitions in the POAA that prevents an association from distributing agenda materials to its board members ahead of their meetings for their individual preparation for a meeting, but POAA’s provisions clearly intend that the discussions for the governance of the community occur in the sunshine, not the shadows, which is the best practice for associations.

There was no indication or information to suggest that the Board was discussing matters that should be addressed in an executive session during its “pre-meetings.” The Board’s decision letter further indicates its awareness of the mechanisms for and purposes of utilizing executive sessions, and the Office encourages the Board to continue to ensure that all business is conducted in an open Board meeting unless the subject matter of an agenda item fits within the matters the POAA allows to be discussed in executive sessions.

## *2. Deficiencies in the Board’s final decision.*

As noted in the discussion above, the Board’s decision issued to the Complainant lacked information that is required to be in its decision responding to a complaint. The details of what is required for an association complaint procedure are laid out in the Common Interest Community Ombudsman’s regulations.<sup>13</sup> Specifically, once the association makes a final determination, it must, within seven (7) days, either hand deliver or send via certified/registered mail with return receipt requested, the written notice. If the association has established procedures for delivery by electronic means, it can send the written notice electronically within seven days if the association retains sufficient proof of the electronic delivery. Also, the association’s notice of final determination is required to be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. Further, the association’s notice of final determination must clearly inform the association member of their right to file a Notice of Final Adverse Decision with the Common Interest Community Ombudsman and provide the CIC Ombudsman’s applicable contact information.

Here, the Board’s final decision met many of these requirements. There were, though, a couple of omissions. As a preliminary matter, the Board’s complaint form cites to “Chapter 29 of Title 55” for the requirement of complaint procedures. That citation is incorrect (repealed); the current requirements are found in Title 54.1 at Chapter 23.3. For the complaint response, the first omission is that the Board’s decision did not include the association’s registration number or the license number of the property manager, if applicable. Second, the Board’s decision lacks a statement of the complainant’s right to file an NFAD with this Office. Each of these omissions require corrective actions.

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<sup>12</sup> See, Va. Code §§ 55.1-1816(B) and 55.1-1807(3).

<sup>13</sup> See, 18 Va. Admin. Code § 48-70-50 (8-10).

### **Determination and Required Actions**

Based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office makes the following determinations and required actions:

- (1) The Board's "pre-meeting" gatherings do not comply with the meeting and notice provisions set forth in Va. Code §§ 55.1-1816 and 55.1-1807. To correct this, the Board should immediately cease conducting "pre meetings" unless such meetings are properly noticed and association members are allowed to attend. This item should be completed within thirty (30) days from the date of receipt this decision; and
- (2) The Board's final decision was deficient in terms of the regulatory requirements, as outlined above. We strongly encourage the Board to correct these deficiencies immediately to ensure that it is, from this point forward, compliant with providing all the required elements in its final decisions to association members.

If the Complainant is dissatisfied with this determination, or part thereof, the Complainant may seek remedies in civil court.



R. Thomas Payne II, Esquire  
Interim CIC Ombudsman

RTP II/bt

cc: Board of Directors, Park Ridge Development of Floyd and Franklin Counties, Inc.