

**IN THE  
COMMONWEALTH OF VIRGINIA  
COMMON INTEREST COMMUNITY BOARD**

In Re:                   North Drive Condominiums  
                              Hawkeye West, LLC

Registration No.:     0517060201

**TEMPORARY CEASE AND DESIST ORDER**

On March 15, 2018, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated March 1, 2018, to consider issuance of a temporary cease and desist order against Hawkeye West, LLC, the declarant of North Drive Condominiums, Registration Number 0517060201.

The Board considered its applicable law: Chapter 23.3 of Title 54.1 (§§ 54.1-2345 et seq.) and Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia. After reviewing the facts and information presented in the memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium project registration anniversary date as required by § 55-79.93 of the Code of Virginia. The declarant’s failure to comply with § 55-79.93 of the Code of Virginia does not assure the public that the declarant is in compliance with the Condominium Act (§§ 55-79.39 et seq.) and the Board’s Condominium Regulations, and would cause irreparable harm to the public interest.

**ORDER**

In the interest of protecting the public from harm, the Board hereby enters a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia. The Board orders Hawkeye West, LLC, the declarant of North Drive Condominiums, to **cease and desist** from the sale of units in the condominium project until an annual report is submitted and determined to be acceptable by the Board. Further, the Board orders that Hawkeye West, LLC submit the required annual report to the Board within 30 days of the effective date of this order.

If the declarant of North Drive Condominiums fails to comply with the terms of this order, the Board may refer the matter for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions permitted by Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia.

This order remains in effect until the declarant submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies above or the matter is adjudicated, whichever is later.

AS PROVIDED BY § 55-79.100(b) OF THE CODE OF VIRGINIA, UPON REQUEST A HEARING WILL BE HELD PROMPTLY TO DETERMINE WHETHER OR NOT THE TEMPORARY CEASE AND DESIST ORDER BECOMES PERMANENT.

**SO ORDERED:**

Entered this 15<sup>th</sup> day of March, 2018.

Common Interest Community Board

BY:

  
Jay W. DeBoer, Secretary

**MEMORANDUM**

**TO: Members  
Common Interest Community Board**

**FROM: Joseph C. Haughwout, Jr., Board Administrator  
Common Interest Community Board**

**DATE: March 1, 2018**

**SUBJECT: Referral for Consideration of Temporary Cease and Desist Order**

<b>Declarant Name:</b>	<b>Hawkeye West, LLC</b>
<b>Condominium Project Name</b>	<b>North Drive Condominiums</b>
<b>Registration No.</b>	<b>0517060201</b>

On October 12, 2006, North Drive Condominiums ("North Drive") became registered as a condominium project in Virginia. Hawkeye West, LLC ("Hawkeye West") is the Declarant for North Drive. There are 20 registered units in the condominium. (Exh. 1)

As part of the registration for North Drive, Hawkeye West submitted an Irrevocable Letter of Credit ("assessment letter of credit") issued by First Community Bank, in the amount of \$20,000.00, in favor of North Drive Condominium Association, the unit owners' association for North Drive. The assessment letter of credit is valid through June 27, 2018. (Exh. 1)

Failure to File Required Annual Report

Section 55-79.88 of the Code of Virginia states, in part:

Unless exempt by § 55-79.87

1. No declarant may offer or dispose of any interest in a condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a condominium unit located without this Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

Section 55-79.93 of the Code of Virginia states:

The declarant shall file a report in the form prescribed by the regulations of the agency within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

In addition, Board Regulation 18 VAC 48-30-540 states, in part:

- A. A declarant shall file an annual report on a form provided by the board to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium.
- B. The annual report shall contain, but may not be limited to, the following:
  - 11. Whether the declarant is current in payment of assessments; and
  - 12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia.

On September 15, 2017, the Common Interest Community Board ("the Board") sent an Annual Report solicitation to the Declarant for the 2017 Declarant Annual Report for North Drive. The 2017 Declarant Annual Report, including the Bond/Letter of Credit Verification Form, for North Drive was due to the Board prior to October 12, 2017. On November 14, 2017, the Board issued a reminder notice to the Declarant. However, no response was received from the Declarant. (Exh. 1 and 3)

Board Regulation 18 VAC 48-30-690 states, in part:

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia:

- 1. Violating, inducing another to violate, or cooperating with others in violating any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 4.1 (§ 55-79.1 et seq.) or Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

Section 55-79.100 of the Code of Virginia states, in part:

(a) If the agency determines after notice and hearing that a person has:

(1) Violated any provisions of this chapter;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

On January 10, 2018, Board staff sent a Final Notice to the Declarant and to the Declarant's Registered Agent, notifying Hawkeye West that it may be in violation of the Condominium Act and the Board's regulations. The notice further specified that a proposal to issue a temporary cease and desist order would be presented to the Board on March 15, 2018. The notice sent to the Declarant was delivered on January 18, 2018. The notice sent to the Declarant's Registered Agent was delivered on January 11, 2018. (Exh. 4)

Board staff requests that the Board consider a proposal to issue a temporary cease and desist order in accordance with § 55-79.100(b) of the Code of Virginia against the Declarant. In addition, Board staff requests the Board require Declarant to submit the required annual report in accordance with the Code of Virginia and the Board's regulations within 30 days of the order's effective date.

This memorandum and attached supporting documentation contain information that is being presented to you for your consideration and determination as to whether the issuance of a temporary cease and desist order is appropriate.

**EXHIBIT  
#**

**Description of Exhibit**

- |   |   |
|---|---|
| 1 | Registration information for North Drive Condominiums                 |
| 2 | State Corporation Commission record for Hawkeye West,<br>LLC          |
| 3 | Board letters to Declarant requesting 2017 Declarant<br>Annual Report |
| 4 | Board meeting letter, dated January 10, 2018                          |