



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

November 30, 2018

Ralph S. Northam  
Governor

Brian Ball  
Secretary of  
Commerce and Trade

Oakwood Villa, LLC  
c/o Laura S. Evick  
Hoover Penrod, PLC  
342 South Main Street  
Harrisonburg, VA 22801

Re: Oakwood Villas Condominium  
Temporary Cease and Desist Order

Dear Ms. Evick:

The Common Interest Community Board (Board) considered a proposal for a Temporary Cease and Desist Order against Oakwood Villa, LLC, declarant of Oakwood Villas Condominium at its meeting on November 29, 2018. While this order is in effect, the Declarant is prohibited from offering or disposing of any interest in a unit in this condominium until such time as the order is lifted. Further, any offer or disposition of any interest in a unit by the Declarant that occurs while this order is in effect may be legally invalid. Enclosed is a copy of the Temporary Cease and Desist Order adopted by the Board.

Please feel free to contact me at (804) 367-2684, or at the below address with any questions you may have.

Sincerely,

COMMON INTEREST COMMUNITY BOARD

A handwritten signature in blue ink that reads "Joseph C. Haughwout, Jr.".

Joseph C. Haughwout, Jr.  
Board Administrator

Enclosure

cc: Patricia A. Hughes, Registered Agent

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

In Re:                   Oakwood Villas Condominium  
                              Oakwood Villa, LLC

Registration No.:     0517040124

**TEMPORARY CEASE AND DESIST ORDER**

On November 29, 2018, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated November 16, 2018, to consider issuance of a temporary cease and desist order against Oakwood Villa, LLC, the declarant of Oakwood Villas Condominium, Registration Number 0517040124.

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 (1) 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, and (2) the declarant has failed to post the assessment bond or letter of credit as required by § 55-79.84:1. The declarant’s failure to comply with §§ 55-79.93 and 55-79.84:1 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 Oakwood Villa, LLC, the declarant of Oakwood Villas Condominium, to **cease and desist** from the sale of units in the condominium project until (1) an annual report is submitted and determined to be acceptable by the Board; and (2) an assessment bond or letter of credit acceptable to the Board is posted with the Board. Further, the Board orders that Oakwood Villa, LLC submit the required annual report and assessment bond or letter of credit to the Board within 30 days of the effective date of this order.

If the declarant of Oakwood Villas Condominium 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.

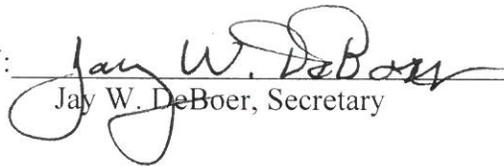
AS PROVIDED BY § 55-79.100(b) OF THE CODE OF VIRGINIA, UPON REQUEST A HEARING WILL BE HELD PROMPTLY TO DETERMINE WHETHER OR NOT THE TEMPORARY CEASE AND DESIST ORDER BECOMES PERMANENT.

**SO ORDERED:**

Entered this 29<sup>th</sup> day of November, 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: November 16, 2018**

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

<b>Declarant Name:</b>	<b>Oakwood Villa, LLC</b>
<b>Condominium Project Name</b>	<b>Oakwood Villas Condominium</b>
<b>Registration No.</b>	<b>0517040124</b>

On July 15, 2004, Oakwood Villas Condominium (“Oakwood”) became registered as a condominium project in Virginia. Oakwood Villa, LLC (“Oakwood LLC”) is the Declarant for Oakwood. There are 16 registered units in the condominium. (Exh. 1)

As part of the registration for Oakwood, Oakwood LLC submitted an Irrevocable Letter of Credit (“assessment letter of credit”) issued by Farmers & Merchants Bank, in the amount of \$16,000.00, in favor of the unit owners’ association for Oakwood. The expiration date for the assessment letter of credit was July 1, 2018. (Exh. 1)

On September 11, 2018, staff contacted Farmers & Merchants Bank in order to verify the assessment letter of credit. A representative for Farmers & Merchants Bank indicated another bank was working with the letter of credit. (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 June 15, 2018, the Common Interest Community Board (“the Board”) sent an Annual Report solicitation to the Declarant’s attorney for the 2018 Declarant Annual Report for Oakwood. The 2018 Declarant Annual Report, including the Bond/Letter of Credit Verification Form, for Oakwood was due to the Board prior to July 15, 2018. On August 14, 2018, the Board issued a reminder notice to the Declarant’s attorney. However, no response was received from the Declarant or anyone on its behalf. (Exh. 1 and 3)

On November 14, 2018, the Board received the 2018 Declarant Annual Report from the Declarant’s attorney. However, the annual report did not contain 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 § 55-79.84:1 of the Code of Virginia. (Exh. 6)

Failure to Post Required Assessment Bond or Letter of Credit

Section 55-79.84:1 of the Code of Virginia states, in part:

- A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.
- B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

In addition, Board Regulation 18 VAC 48-30-570.A states:

- A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55-79.84:1 of the Code of Virginia shall maintain such bond or letter of credit for all units registered with the board until the declarant owns less than 10% of the units in the condominium and is current in the payment of assessments. For condominiums containing less than 10 units, the bond or letter of credit shall be maintained until the declarant owns only one unit.

Further, Board Regulation 18 VAC 48-30-600.A states:

- A. The declarant shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia within five days of the change.

On September 11, 2018, a representative for Farmers & Merchants Bank indicated another bank was working with the letter of credit. (Exh. 1) In a letter dated November 8, 2018, the attorney for Oakwood LLC indicated the Declarant was in the process of obtaining a letter of credit from TrustPoint. (Exh. 6) As of November 15, 2018, Oakwood LLC has not posted a replacement letter of credit.

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 September 13, 2018, staff sent a Final Notice to the Declarant's attorney and the Declarant's registered agent, notifying Oakwood LLC 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 November 29, 2018. The notices were delivered on September 14, 2018. (Exh. 4)

On November 2, 2018, staff sent a revised Final Notice to the Declarant's attorney and the Declarant's registered agent, notifying Oakwood LLC that it may be in violation of the Condominium Act and the Board's regulations. The revised notice specified that a proposal to issue a temporary cease and desist order would be presented to the Board on November 29, 2018. The notices were delivered on November 5, 2018. (Exh. 5)

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. Staff requests the Board to find that 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 Condominium Regulations, and would cause irreparable harm to the public interest. Further, staff requests the Board require the Declarant to (i) submit the required annual report in accordance with the Code of Virginia and the Board's regulations, and (ii) provide evidence satisfactory to the Board that it has obtained a bond or letter of credit in accordance with § 55-79.84:1 of the Code of Virginia 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 Oakwood Villas Condominium               |
| 2 | State Corporation Commission record for Oakwood Villas,<br>LLC        |
| 3 | Board letters to Declarant requesting 2018 Declarant<br>Annual Report |
| 4 | Board meeting letter, dated September 13, 2018                        |
| 5 | Board meeting letter, dated November 2, 2018                          |
| 6 | Letter from Declarant's attorney, dated November 8, 2018              |