



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

June 7, 2019

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade
Jay W. DeBoer
Director

Harbor Heights Residential, LC
150 West Main Street
Suite 1100
Norfolk, VA 23510

Re: Harbor Heights Condominium
Temporary Cease and Desist Order

Dear Harbor Heights Residential, LC,

The Common Interest Community Board (Board) considered a proposal for a Temporary Cease and Desist Order against Harbor Heights Residential, LC, declarant of Harbor Heights Condominium at its meeting on June 6, 2019. 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." with a stylized flourish at the end.

Joseph C. Haughwout, Jr.
Board Administrator

Enclosure

cc: Thomas E. Robinson, Registered Agent

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

In Re: Harbor Heights Condominium
Harbor Heights Residential, L.C.

Registration No.: 0517050255

TEMPORARY CEASE AND DESIST ORDER

On June 6, 2019, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated May 28, 2019, to consider issuance of a temporary cease and desist order against Harbor Heights Residential, L.C., the declarant of Harbor Heights Condominium, Registration Number 0517050255.

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 Harbor Heights Residential, L.C., the declarant of Harbor Heights Condominium, 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 Harbor Heights Residential, L.C. submit the required annual report to the Board within 30 days of the effective date of this order.

If the declarant of Harbor Heights 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 6th day of June, 2019.

Common Interest Community Board

BY: 
Mary Broz-Vaughan, Acting Secretary

MEMORANDUM

TO: Members
Common Interest Community Board

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

DATE: May 28, 2019

SUBJECT: Referral for Consideration of Temporary Cease and Desist Order

Declarant Name:	Harbor Heights Residential, L.C.
Condominium Project Name	Harbor Heights Condominium
Registration No.	0517050255

On March 8, 2006, Harbor Heights Condominium ("Harbor Heights") became registered as a condominium project in Virginia. Harbor Heights Residential, L.C. ("Harbor Heights LC") is the Declarant for Harbor Heights. There are 99 registered units in the condominium. (Exh. 1)

As part of the registration for Harbor Heights, Harbor Heights LC submitted an Irrevocable Standby Letter of Credit ("assessment letter of credit") issued by The Bank of Hampton Roads (now Atlantic Union Bank), in the amount of \$99,000.00, in favor of the unit owners' association for Harbor Heights. The assessment letter of credit is automatically renewable from year to year. On May 20, 2019, the issuer of the assessment letter of credit verified the letter of credit is valid through September 8, 2019. (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 February 15, 2019, the Common Interest Community Board (“the Board”) sent an Annual Report solicitation to the Declarant for the 2019 Declarant Annual Report for Harbor Heights. The 2019 Declarant Annual Report for Harbor Heights was due to the Board prior to March 8, 2019. On April 16, 2019, the Board issued a reminder notice to the Declarant. However, no response was received from the Declarant or anyone on its behalf. (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 May 21, 2019, staff sent a Final Notice to the Declarant and the Declarant's registered agent notifying Harbor Heights LC 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 June 6, 2019. The notice was delivered on May 22, 2019. (Exh. 4)

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 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
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Description of Exhibit

- | | |
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| 1 | Registration information for Harbor Heights Condominium |
| 2 | State Corporation Commission record for Harbor Heights
Residential, L.C. |
| 3 | Board letters to Declarant requesting 2019 Declarant
Annual Report |
| 4 | Board meeting letter, dated May 21, 2019 |