

IN THE
COMMONWEALTH OF VIRGINIA
COMMON INTEREST COMMUNITY BOARD

In Re: **Calvert Lofts, a Condominium
Mariposa, LLC**

Registration No.: 0517131271

TEMPORARY CEASE AND DESIST ORDER

On March 9, 2023, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated March 1, 2023, to consider issuance of a temporary cease and desist order against Mariposa, LLC, the declarant of Calvert Lofts, a Condominium, Registration Number 0517131271.

The Board considered its applicable law: Chapter 23.3 of Title 54.1 (§ 54.1-2345 et seq.) and Chapter 19 of Title 55.1 (§ 55.1-1900 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 (i) failed to file an annual report within thirty (30) days of the condominium registration anniversary date as required by § 55.1-1979 of the Code of Virginia; (ii) failed to post or maintain a bond or letter of credit to insure payment of assessments as required by § 55.1-1968 of the Code of Virginia; and (iii) failed to comply with the requirements of 18 VAC 48-30-570 of the Condominium Regulations.

The declarant's failure to comply with §§ 55.1-1979 and 55.1-1968 of the Code of Virginia, and 18 VAC 48-30-570 of the Condominium Regulations does not assure the public that the declarant is in compliance with the Virginia Condominium Act (§ 55.1-1900 et seq.) and the 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 § 55.1-1986(B) of the Code of Virginia. The Board orders Mariposa, LLC, the declarant of Calvert Lofts, a Condominium, to **cease and desist** from the sale of units in the condominium until (i) an annual report is submitted and determined to be acceptable by the Board; and (ii) current evidence from the surety or financial institution of the bond or letter of credit required pursuant to § 55.1-1968 of the Code of Virginia, or a replacement bond or letter of credit; or a request for return of the assessment letter of credit that meets the requirements of 18

VAC 48-30-570 is received and determined to be acceptable by the Board within 30 days of the effective date of this order.

If the declarant of Calvert Lofts, a 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 19 of Title 55.1 (§ 55.1-1900 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 § 55.1-1986(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 9th day of March, 2023.

Common Interest Community Board

BY:


Demetrios J. Melis, Secretary

MEMORANDUM

TO: **Members**
Common Interest Community Board

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

DATE: **March 1, 2023 (revised March 6, 2023)**

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

Declarant Name:	Mariposa, LLC
Condominium Name	Calvert Lofts, a Condominium
Registration No.	0517131271

On December 1, 2021, Calvert Lofts, a Condominium (“Calvert Lofts”) became registered as a condominium in Virginia. Mariposa, LLC is the Declarant for Calvert Lofts. There are eight (8) registered units in the condominium. (Exh. 1)

As part of the registration for Calvert Lofts, Mariposa, LLC submitted a Bond to Insure Payment of Assessments (“assessment bond”) issued by SureTec Insurance Company, in the amount of \$10,000.00, in favor of the unit owners’ association for Calvert Lofts. The expiration date of the assessment bond is September 28, 2022.

Failure to File Required Annual Report

Section 55.1-1974 of the Code of Virginia states, in part:

Unless exempt by § 55.1-1972

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

Section 55.1-1979 of the Code of Virginia states:

The declarant shall file a report in the form prescribed by the regulations of the Common Interest Community Board 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 to §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia.

On October 28, 2022, the office of the Common Interest Community Board ("the Board") sent an Annual Report solicitation to the Declarant's attorney for the 2022 Declarant Annual Report for Calvert Lofts. The 2022 Declarant Annual Report for Calvert Lofts was due to the Board prior to December 1, 2022. On or about December 27, 2022, the Board issued a reminder notice. However, no response was received from the Declarant or anyone on its behalf. (Exh. 1 and 3)

Failure to Maintain Assessment Bond or Letter of Credit

Section 55.1-1968 of the Code of Virginia states, in part:

- A. The declarant of a condominium containing units that 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 that 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 states, in part:

- A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55.1-1968 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.
- B. The declarant shall submit a written request to the board for the return of the bond or letter of credit. The written request shall attest that the declarant (i) owns less than 10% of the units or for condominiums containing less than 10 units, that the declarant owns only one unit and (ii) is current in the payment of assessments. The written request shall provide contact information for the unit owners' association.

On February 27, 2023, the issuer of the assessment bond indicated the assessment bond had been canceled. (Exh. 1)

To date, the Declarant has not submitted a written request to the Board for return of the assessment bond. The Declarant has not posted a replacement assessment bond or 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 issuance of a temporary cease and desist order in accordance with § 55.1-1986 B of the Code of Virginia:

- 1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of 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 19 (§ 55.1-1900 et seq.) or Chapter 20 (§ 55.1-2000 et seq.) of Title 55.1 of the Code of Virginia.

7. Failing to comply with the post-registration requirements of 18VAC48-30-460, 18VAC48-30-470, 18VAC48-30-480, 18VAC48-30-490, 18VAC48-30-500, 18VAC48-30-510, 18VAC48-30-520, 18VAC48-30-530, and 18VAC48-30-540.

Section 55.1-1986 of the Code of Virginia states, in part:

- A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that such person has:
 1. Violated any provision of this chapter;
 5. Violated any lawful order or regulation of the Common Interest Community Board.
- B. If the Common Interest Community Board 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 order to cease and desist or to take such affirmative action as may be deemed appropriate by the Common Interest Community Board. Prior to issuing the temporary order, the Common Interest Community Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether it becomes permanent.

On February 10, 2023, staff sent a Final Notice to the Declarant's attorney and the Declarant's registered agent notifying Mariposa, LLC that it may be in violation of the Virginia 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 9, 2023. The notice to the Declarant's attorney was delivered on February 13, 2023. The notice to the Declarant's registered agent was delivered on February 14, 2023. (Exh. 4)

On February 28, 2023, staff sent an Amended Final Notice to the Declarant's attorney and the Declarant's registered agent notifying Mariposa, LLC that it may be in violation of the Virginia 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 9, 2023. The notices were delivered on March 1, 2023. (Exh. 5)

Staff requests that the Board consider a proposal to issue a temporary cease and desist order in accordance with § 55.1-1986(B) of the Code of Virginia against the Declarant. Staff requests the Board to find that the Declarant's failure to comply with §§ 55.1-1979 and 55.1-1968 of the Code of Virginia, and 18 VAC 48-30-570 of the Condominium Regulations does not assure the public that the Declarant is in compliance with the Virginia Condominium Act (§ 55.1-1900 et seq.) and the Condominium Regulations, and would cause irreparable harm to the public interest. Further, staff requests the Board require Declarant to (i) submit the required annual report in accordance with the Code of Virginia and the Board's regulations; and (ii) either provide current evidence from the surety or financial institution of the bond or letter of credit required pursuant to § 55.1-1968 of the Code of Virginia, or submit a replacement bond or letter of credit; or provide a request for return of the assessment bond that meets the requirements of 18 VAC 48-30-570 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 #	<u>Description of Exhibit</u>
1	Registration information for Calvert Lofts, a Condominium
2	State Corporation Commission record for Mariposa, LLC
3	Board letter to Declarant requesting 2022 Declarant Annual Report
4	Temporary Cease and Desist Notification, dated February 10, 2023
5	Amended Temporary Cease and Desist Notification, dated February 28, 2023