

July 27, 2022

Sent via email to amanda.ford@ams-nw.com

Board of Directors
Scholls Pointe Condominiums Owners Association

Re: Legal Requirements for Disclosure

Dear Board of Directors:

I received a request to provide more information regarding the July 26, 2022, letter that threatened litigation and the Association's disclosure requirements. The Association is obligated to provide information to lenders and prospective buyers upon request when any unit is being sold. The majority of the requests use Fannie Mae's Form 1076, a copy of which is enclosed.

An addendum to the Form was created in 2021 after the condominium in Florida collapsed. The addendum is intended to identify communities that have deferred necessary repairs and are not properly funded to perform the repairs. By increasing awareness of this widespread issue in condominium communities, we may be able to avoid similar tragedies. That addendum requires disclosure of expert reports and findings related to the safety, soundness, structural integrity, or habitability of the buildings. That is a broad requirement and is not limited to issues such as imminent collapse. The defects identified in the Scholls Pointe reports from 2017 to the present date must be disclosed on the Form 1076 addendum. The addendum further requires disclosure of any repairs that were recommended but not completed, and information about the plan for funding the recommended repairs. Unfortunately, the disclosure of this information without a funded plan for repairs is likely to dramatically impact owners' ability to sell their units for a marketable price.

The Form also requests information about any "active or pending litigation" (Section IV.3). I would characterize the recent litigation threat as "threatened litigation" rather than active or pending, but the Association would be taking a risk by deciding not to disclose. That risk is easily avoidable by disclosing the litigation threat, and I recommend disclosing it. The litigation threat also needs to be provided to the Association's insurer. The insurance policy contains notice requirements and failing to timely disclose this threat could cause the insurer to deny coverage if a lawsuit were filed. If a lawsuit were filed, the insurance company would hire an attorney to defend the Association and Board. Such an insurance claim could increase the Association's insurance premiums or insurability in the future, but hopefully would not result in other uninsured expenses. Any uninsured expenses resulting from such a lawsuit would be common expenses that would be paid by all owners as assessments.

I do want to note that I believe the risk of losing a lawsuit based on the information in the July 26, 2022, letter to be quite low. I agree that a 75% owner vote is required for a loan, but there is no owner vote requirement for an assessment, special or otherwise. Section 3.2.14 of the Bylaws contains an owner vote requirement for improvements of more than \$10,000, but the last sentence of that section states: "This limitation shall not be applicable to repairs or maintenance undertaken pursuant to Section 3.2.1." Section 3.2.1 is the section that makes the Board responsible for the operation, care, upkeep, repair, replacement, and maintenance of the Common Elements and Association Property: the exact work that

is being contemplated so the vote requirement is inapplicable. The Board's authority to levy special assessments for this type of work is described in Bylaws Section 5.5.2 which allows the Board to build up reserves for non-reserve components, but also provides authority for the Board as follows: "If the estimated cash requirement proves inadequate for any reason...the Board of Directors may at any time levy a further assessment..." It is not limited to any specific types of expenditures. However, even if Bylaws Section 5.5.2 did not exist, the Board would still have authority to levy a special assessment without an owner vote because the governing documents do not contain an owner vote requirement. Pursuant to Bylaws Section 3.2 and ORS 100.417, the Board performs all acts on behalf of the Association unless specifically restricted by the governing documents. Since the governing documents contain no restrictions on the Board's ability to levy assessments, there is no owner vote requirement. For these reasons, I believe that the Association would prevail in any lawsuit regarding special assessment voting requirements.

Sincerely,

Bagby Law Firm LLC

A handwritten signature in blue ink that reads "Angie Bagby". The signature is written in a cursive style with a large initial "A" and a stylized "B".

Angie Bagby

Encl.