



HARKER | LEPORE

Attorneys at Law

July 26, 2022

Board of Directors
Scholls Pointe Condominiums Owners' Association
c/o Angie Bagby
15350 SW Sequoia Pkwy #200
Portland, OR 97224

Via email to: angie@bagbylegal.com

RE: Scholls Pointe Special Assessment

Angie,

I represent Brad Guth, one of the unit owners at Scholls Pointe. I understand that the Board has voted to move forward with a special assessment. I emailed you requesting a citation to the governing documents which authorizes such an assessment without a vote of the owners. Under the provisions of the governing documents, a vote of the ownership is required to proceed with the special assessment. The following is my reasoning.

The Association's building envelope consultant has identified areas of the Condominium requiring repairs. The work includes repairs to the decks and railings, sliding glass doors, and building roofs. All of the repairs are for existing building components. In order to fund the repairs, the Board is planning on securing a bank loan. Unit owners will be specially assessed in order to repay the loan.

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The governing documents include the Declaration of Condominium Ownership for Scholls Pointe Condominiums (recorded as document number 2002-094412) and the Bylaws of Scholls Pointe Condominiums Owners' Association (recorded as an exhibit to the Declaration), along with certain amendments thereto. The Declaration does not address the Board's authority to levy special assessments.

Section 5.1.1 of the Bylaws governs the Association's budget, and includes a statement that the Board, at its sole discretion, may levy a special assessment. However, that authority is limited to two circumstances: 1) if the current budget is insufficient for operation and management, or 2) in the event of an emergency. The proposed special assessment is for repairs to common elements. It is not for the management of the Condominium and not for any emergency.

Similarly, Section 5.5.2 of the Bylaws authorizes special assessments without a vote of the owners, but again, only under specific circumstances. The language in this section authorizes a special assessment to "build up and maintain" reasonable reserves NOT covered by Section 14.3 of the Declaration or Section 5.2 of the Bylaws. The repairs the Board is now contemplating are absolutely part of the original reserve requirements. In fact, the 2021 RSG reserve study includes the decks, roofs, and sliding doors as items for which the Association must reserve. Because these components are covered by Section 14.3 of the Declaration and Section 5.2 of the Bylaws, the special assessment authority in Section 5.5.2 does not apply.

Because the proposed special assessment is for repairs to common elements, Section 3.2.14 of the Bylaws governs. Under this provision, non-capital additions or improvements exceeding \$10,000 require owner approval:

~~3.02.14~~

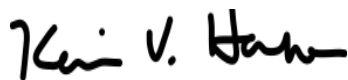
3.2.14 Making additions and improvements to, or alterations of, the Common Elements; provided, however, that no such project of a non-structural or non-capital nature may be undertaken by the Board of Directors if the total cost will exceed the amount of Ten Thousand Dollars (\$10,000), unless (i) the Owners have enacted a resolution authorizing the project by a vote of Owners holding at least 75 percent of the voting power of the Association, present in person or by proxy at a meeting of the Owners or (ii) the expenditure is authorized in the annual budget of the Association. This limitation shall not be applicable to repairs or maintenance undertaken pursuant to Section 3.2.1.

In addition, the Bylaws also restrict the Board's ability to borrow money:

3.2.16 Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common Elements and Association Property; provided, however, that (i) the consent of Owners holding at least 75 percent of the voting power of the Association, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required for the borrowing of any sum in excess of an amount or amounts, aggregated for the calendar year in question, exceeding 15 percent of the estimated budget of the Association for that calendar year to cover the operation, care, upkeep and maintenance of the Common Elements and Association Property, and (ii) no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the consent of the Owner of such Unit. If any sum borrowed by the Board of Directors on behalf of the Association pursuant to the authority contained in this Section 3.2.16 is not repaid by the Association, an Owner who pays to the creditor such proportion thereof equal to his interest in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against such Owner's Unit.

Under both of these provisions, the Board must receive owner approval to move forward with the proposed special assessment. If the Board moves forward with the special assessment and does not secure owner approval, I have been instructed to file suit against the Association. The lawsuit would request a declaratory judgment that an owner vote is required to move forward, along with attorney fees.

Sincerely,

A handwritten signature in black ink that reads "Kevin V. Harker". The signature is written in a cursive, slightly slanted style.

Kevin V. Harker