

Cromwell Park at Salem Condominium Association

Board of Directors Board Meeting, Thursday, July-16-2020

Association Litigation Status

During the Homeowner's Forum several homeowners asked for additional information pertaining to the current status of the litigation against the Association. After those interactive discussions, The Board responded positively to the homeowners with a commitment to distribute an update on the litigation and to continue to do so going forward. With the assistance of our legal team the following notice has been prepared for your information.

A suit was filed against Cromwell Park Condominium Association by an owner in 2019. The insurance carrier for the Association is currently providing an attorney to defend the Association. The Association has denied liability and responses and briefs have been filed with the Virginia Beach Circuit Court. On March 16, 2020 the Virginia Supreme Court issued a Notice of Judicial Emergency as a result of the Coronavirus which effectively closed the courts to further litigation. As a result, a definitive ruling from the court on the defenses raised by the Association has been unavailable and neither side has been permitted to obtain a trial date.

The Board of Directors consulted with its attorneys at the inception of the suit to determine if there was any obligation to make the lawsuit public. The board was assured that there was no affirmative duty to provide information to owners and in fact actively discouraged the Board from making the lawsuit public for two reasons:

1. Because of the nature of the complaint, providing identifying information or commenting on the substance of the allegations could be misinterpreted as attempting to coerce the plaintiff or could otherwise be seen as retaliatory. This could again create an opportunity for additional claims by the plaintiff which does not serve the best interest of the association and its members.
2. The Condominium Act identifies certain documents and records of the Association as privileged and not subject to dissemination including records related to "Pending or probable litigation," "Individual unit owner or member files, other than those of the requesting unit owner" and "communications with legal counsel." Records regarding the lawsuit readily fall into all 3 categories.

Other provisions of the Condominium Act provide for the limited release of information incident to a resale package or refinance. In these cases, both the Board and Management have made every effort to provide all information required by law related to litigation so that owners have the opportunity to buy, sell and refinance. Other than disclosing the required information, lenders have been directed to documents which have been filed with the Court as these are public records and may be accessed by anyone. While our legal counsel has opined that the plaintiff's claim will not be successful, there is no way to guarantee that the Association will prevail in the lawsuit. For this reason, we are required to disclose the lawsuit as constituting litigation which could or would have a material impact on the Association.

c/o Community First Management

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Cromwell Park at Salem Condominium Association

Pursuant to the Virginia Condominium Act, §55.1-1956, the Board of Directors of the Association has the exclusive right and responsibility to "...defend against, compromise, adjust, and settle any claims or actions" and is not required to consult with or obtain the consent from any owner or group of owners prior to engaging in any defense, compromise or settlement.

It is understandable that people are concerned for the financial security of the Association and the impact that lawsuits have on its members. However, the insurance company is paying for our continuing defense at no cost to the Association or its members. We have a duty to cooperate in that defense and to the extent that our legal counsel has requested that we refrain from comment on the litigation we will continue to do so.

Gary Scott

HOA President

c/o Community First Management

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