

Ken Lawson, Secretary

Rick Scott, Governor

March 25, 2014

Harbor Pointe Condominium Association, Inc.
C/o Mr. William Van Englenburg
7 Indian River Ave, Unit 1204
Titusville, Florida 32796

Dear Mr. Englenburg and Directors:

This letter is in response to the board's letter of February 20, 2014, to Mr. Jack Callinan. I'm writing because certain information in the Association's letter needs to be clarified and addressed in regard to the Division's role and position in this matter, and to clarify the suggested corrective action that was presented to the board at the January 27, 2014, meeting.

For easy reference, I have taken excerpts from the text of the letter to Mr Callinan, in italics below, followed by my response.

Financial Problem

"Harbor Pointe experienced a financial debacle three years ago cumulating in 2011 when it could not obtain a financial audit. Banks were reluctant to make loans for purchases of units here and owners' investments' potentially lost value. In 2011 a new way of doing business was begun. The new Board hired a new management firm, a new Association Attorney and a qualified CPA Firm to re-establish our financial and official records. Throughout this process the Board was in frequent contact with the DBPR for advice and made additions and corrections at their direction."

The Association is correct that the Division, through educational means, has been working with the Association since 2012. I first met with the board and a group of unit owners on January 20, 2012, to discuss the budgeting process and records maintenance. One of the issues discussed at this meeting was how to correct the accounting records with regard to the reserve accounts, specifically unallocated reserve funds. Based on the information provided, it was the Division's understanding that the Association had no way of knowing how these reserve funds should be properly allocated due to missing and inaccurate accounting records.

Based on this information, I suggested that the board first prepare a method of allocating the funds to each of the reserve accounts and present it to the unit owners for their approval. I suggested that since the board was making decisions regarding the unit owner's money, the unit owners should have a voice in the decision through unit owner vote. I also indicated that if a consensus could not be reached with the unit owners, in order to get a starting point for the reserve accounts and address the unallocated funds, the board could make a decision on how to allocate the funds in a manner that would be in the best interest of all of the members. The allocation would give the Association a starting point for the following year's budget.

History

The Reserves were pooled in 2009 both forward and backward to make funds available to repair the flat roofs of the Condominium, when our reserved funds for the roof were not

adequate and it was uncertain if and to what extent the Developer would help with the repairs. A favorable settlement was reached with the Developer in mid 2010 and the Board voted to restore the Reserves to line items before the end of the year. Vesta, our management company at the time did not do so. In June, the 2011 Board replaced Vesta with Leland Management. Leland's first order of business was to restore the Reserves to line items. They had difficulty doing this because of the poor bookkeeping records. Further it was discovered that the last complete audit of Harbor Pointe books was performed at the Developer turnover four years prior. Other important records, contracts, receipts and meeting minute books, normally used in producing an audit were incomplete or simply did not exist. On the recommendation of Leland and the DBPR, the 2011 Board contracted Kane and Company, a respected CPA firm to clean up our financial records, restore the Reserves to line items and produce an audit. At a cost of nearly \$30,000 and a year later, a qualified audit was obtained for 2011. No audit was obtained for 2010. An unqualified audit was obtained for 2012 and Harbor Pointe is in the process of having the 2013 audit performed which is expected to be unqualified. Kane and Company stated in their 2012 audit that our Reserves are fully funded.

As a matter of clarification, the Division does not make recommendations regarding the hiring of CPA's or any other professionals. If the Division made any recommendation, it would have been to contact the Florida Institute of Certified Public Accountants, FICPA, for a list of CPA's that specialize in condominiums.

Resolution

The process used to accomplish the restored line item reserves was reviewed and blessed by Harbor Pointe Association attorneys, the DBPR, additional CPA qualified persons as well as Kane and Company and Leland. Several earlier Reserve Studies were consulted and a professional Engineer's Inspection and report were among the tools used. The Marina Committee obtained its first comprehensive Reserve study, breaking down parts of the Marina into various elements of wear for reserve purposes. The pooled Reserve money was reallocated and adjusted into the restored Reserves as information dictated. In 2013 the Board also adjusted the Reserves by adding a Landscape Reserve.

Thanks to a full time on-site manager, a pro-active attorney and a tenacious Board, Harbor Pointe recovered large amounts of delinquent fees and negotiated vendor overcharges in 2012 and 2013 to establish a sound financial basis owners' might recognize by their lower maintenance fees, while the property has been maintained and is in good repair.

The potential of missing funds was especially concerning to the Board. How much was it, if any, and from what Reserve was it spent or misspent, or was mischief involved? At the time several owners who were actively involved in the attempt to retrieve and rebuild records consulted their personal attorneys for advice on pursuing legal action All were advised that a forensic audit would be required, and further that this was a very long and expensive process and may not accomplish favorable results.. During this time the nation was experiencing an economic crisis and Harbor Pointe had over 30 units that were delinquent in paying fees. Courts would not fault a Board or Treasurer who paid the light bills instead of funding the Reserves. Therefore, on this advice and because of the lack of reliable, accurate records, the Board "drew a line in the sand" and restored Reserves as best as could be determined by the professionals involved to their current amounts using the tools at their disposal, and chose not to pursue the matter further. The actual amount of funds that are unaccounted for from 2008 to 2010 remains unknown.

The issue at hand is not that the board failed to seek the advice of professionals in attempting to correct the problems with its accounting records and reserve accounts, but that the funds in question, \$59,350, have not been transferred into the reserve accounts as of December 31, 2012. Instead, the board alludes that the Association had over 30 units that were delinquent in paying assessments and rather than fund reserves, the funds were used to make up the deficit

of those who did not pay. While many condominiums in Florida face similar hardships, the funding of reserves is a common expense just like any other line item on the budget and must be paid/transferred. The Association's letters of May 28, 2013, and August 19, 2013, both of which I have included, also confirm that due to economic hardships the Association did not transferred the required funds to reserves.

Unresolved

One item remains unresolved is the funds missing from the Marina account. The Marina, while a part of the Association, is a separate entity and is funded in a separate manner with slip assignees paying approximately \$5 for every \$1 owners pay for its upkeep. Because of this difference in fee structure, the funds cannot be comingled at any time or spent for anything other than Marina expenses and should not have been pooled. When the Reserves were pooled, it appears all were pooled including the Marina. At the time of this incident, the Marina was less than two years old. Unlike the Association funds with a long history of missing records of support, the Marina had a clear history and its monies could be verified. In 2012 the missing Marina monies totaled approximately \$50,000 and a verbal agreement was reached between the Association Treasurer and the Marina Committee Chair to restore those funds to the Marina account. The BOD voted in a budget meeting on Nov. 1, 2012 to restore \$25,000 of that amount. The balance of misappropriated funds (\$25,000) has not been restored.

In order to be in compliance with the Condominium Act, any unallocated funds must be restored. When funds are set aside for reserve purposes, the unit owners must vote and agree to do so, knowing that those funds are securely set aside for a particular purpose, and cannot be used for anything other than that intended purpose unless they give the board approval to do so. In the Association's letters to the Division dated May 28 and August 19, one instance in particular stands out with regard to this issue. Specifically, the board and unit owners agreed to set aside funds in a reserve account titled "Thompson Water Treatment" for the purpose of prolonging the useful life of the docks. The letters indicate that the board, in order to prevent polluting the surrounding waterways, decided they would reallocate these funds to other reserve accounts. While the board alone can make a decision not to use this form of protection on the decks, the reallocation of these funds is one that the unit owners must make through unit owner vote as these funds were set aside for an agreed upon intended purpose.

Continuing Complaints

Since 2012 and continuing today, Jack Callinan has frequently requested Association records from his tenure on the Board, which included responsibility for the finances and financial records for the period of 2008-2010; the years of missing records. The Board and management have spent many hours attempting to fulfil his requests. However, as earlier stated, a number of records for that time period were not available. He filed several written complaints with the DBPR which we duly answered. At one point the DBPR requested our proposed 2014 budget and upon their review, requested that we add a column listing the remaining life for each line item which was completed. At no time were we requested by any agency to change our figures.

In October Of 2013, we were advised by a telephone call from the DBPR that Mr. Callinan had hired a lawyer and a former DBPR CPA to sue the Association if they did not adjust the Reserves to his calculated figures. At DBPR's request we authorized our CPA firm speak to them about the process used to obtain our audits. The CPA charged Harbor Pointe a fee of \$550 for the consultation. In January of 2014 Patrick Flynn of the DBPR personally visited Harbor Pointe, distributed a spread sheet compiled by Mr. Callinan and other financial data that Mr. Callinan thought supported his position and told us again of Callinan's request for changes to be made in the Reserve amounts according to his figures. The spread sheet presented is based on budgets which we now know contained unaudited figures that cannot be substantiated by any financial records for the time period of 2008-2010. Harbor Pointe established its 2011

Reserves with the prudent advice and in a manner that complied with the DBPR direction according to the comments made by Mr. Flynn. Harbor Pointe has fully responded and complied with all of DBPR's written requests.

This statement is accurate and was the basis for the January 27, 2014, meeting that I participated in with the Association. Subsequent to the first meeting I held in 2012, an analysis was prepared utilizing the adopted budgets and the financial statements for the years 2008 through 2013. As I explained at this meeting, the analysis compared the adopted budgets with reserve to the financial statements and captured the items that were actually funded. Since an adopted budget gives the Association authority to assess the unit owners, those assessments, which included reserves, are what should have been collected **and** funded. While I understand there was a period of time when over 30 unit owners were delinquent in paying assessments, those funds which included reserves, are still owed and must be funded. As previously stated, the analysis shows that the Association through 2012 has not funded \$59,250 of reserve monies. Just like the electricity bill has to be paid, the reserves also have to be paid/funded.

The 2014 budget was reviewed by the Division to ensure that the Association utilized the proper format and contained all of the required disclosures based on previous year's budgets that failed to include reserve schedules and remaining useful lives for various assets. The revisions that the Association made were to correct these deficiencies.

Summary

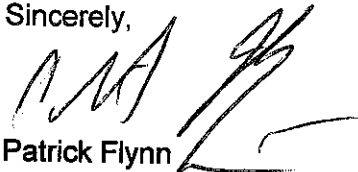
While no Board of Directors looks forward to being sued, the threat should not cause prudent decisions based on known facts to be discarded. Should the BOD yield to this demand, Harbor Pointe will revert to the financial circus of the past, not with-standing great expense already paid to correct the former mistakes and forfeit any hope of obtaining an unqualified audit in the future. Further, we understand a vote of the membership is required to modify the Reserves, which so far has been impossible. We remain steadfast that Harbor Pointe previously took a prudent course of action on credible advice to restore the Reserves, obtain unqualified audits, secure the home owner's investments and the future of Harbor Pointe.

In conclusion, the issue still at hand is the underfunding of \$59,350 to the reserve accounts from the operating account. This allocation does not require a vote of the unit owners and merely corrects what should have already been done based on the adopted budgets. The reallocation of funds in each of the affected reserve accounts needs to be done in order to rectify what should have been previously done had the funds been properly allocated to the reserve accounts. The corrective action required is to transfer the \$59,350 to the reserve accounts within the next 60 days or get the unit owners approval to waive this funding requirement and revise the reserve fund balances to reflect the correct amounts. Please provide documentation that confirms the monies have been properly allocated no later than May 26, 2014. Failure to apply corrective action within this time frame will result in further enforcement action.

If you have any questions, please feel free to contact the Division's education section at 850-717-1471 or by email at patrick.flynn@dbpr.state.fl.us

Thank you for the opportunity to be of service.

Sincerely,



Patrick Flynn
Government Analyst II
Bureau of Compliance

Cc: Dan Devoss
7 Indian River Avenue, No 907
Titusville, Florida 32796

William Dickinson
7 Indian River Avenue, No 406
Titusville, Florida 32796

Carol McDonald
7 Indian River Avenue, No 1107
Titusville, Florida 32796

Harry Holmgren
5 Indian River Avenue, No 1107
Titusville, Florida 32796

Doreen Horvath
7 Indian River Avenue, No 1206
Titusville, Florida 32796

Florida Department of
Business & Professional Regulation
Bureau of Compliance

August 19, 2013

RECEIVED
FCT/MH
18 AUG 26 PM 12:29

ATTN: Yaeli Rockwell
Financial Examiner/Analyst II

Re: Harbor Pointe Condominium Association, Inc.
Case No. 2013007686

Dear Yaeli,

The current Harbor Pointe Board of Directors, whom have been in place since March 2012 agrees with your findings and have been working diligently to bring the Association into compliance with the State Statutes - throughout their term.


Attached is a copy of the Harbor Pointe Condominium Association Preliminary 2014 Draft Budget, that has been prepared to comply with the omissions discussed in your July 22, letter, as well as to set the foundation for preparing the next year's budget for Harbor Pointe.

To help clarify the issues discussed on the Marina Reserve line "Thompson Water Treatment" which is a wood preservative used to prolong the life of the wood decking of the marina, it was decided by the Board that the preservative would not be used on the docks in order to prevent polluting of the Indian River Lagoon by using this chemical. But rather that the wood decking would be replaced when needed, with a composite decking material not requiring treatment with this chemical, and having an extended life of its own. So the associated reserve funds were redistributed proportionally to the other reserve items in the Marina Reserves.

The old Reserve line "Wood Frame / Piling / Wave" combined several items that had different useful life and cost for each item. So a decision was made by the Board to establish three Reserve lines to better account and tract the items (Wood Framing, Concrete Piles, and Wave Attenuators). The associated reserve funds were redistributed proportionally to the broken out categories with their appropriate life terms.

Harbor Pointe Condominium Association has engaged an engineering firm to inspect the property and prepare a current Reserve Study updating all reserve items in compliance with State Requirements. This should be completed for us by Oct 31, 2013 in time for us to use for our 2014 Budget process. The Estimated Life Expectancy of each reserve item will be verified and incorporated in to the Reserve Calculations Tables for the Condominium and Marina sections that we currently have. This study will be used to prepare the final 2014 budget to be reviewed by the owners and approved by the Board. A copy of the approved Budget will be provided to your office upon its completion.

Sincerely,


Harry Holmgren, Vice President
Harbor Pointe Condo Association

For
William Van Engelenburg, BOD President
(currently out of the country on vacation)

Encl: 2014 Preliminary Draft Budget drafted by Leland Management



7 Indian River Ave #1206, Titusville, FL 32796

Office 321-383-7580 Fax 321-383-7581

Email: dhorvath@lelandmanagement.com

DBPR – Division of Florida Condominiums – Bureau of Compliance

1940 North Monroe Street

Tallahassee, Florida 32399

FAX 850-488-7149

OFC 850-717-1469

EMAIL: Yaeli.rockwell@myfloridalicense.com

May 28, 2013 ✓

RE: Case # 2013007686

Dear Ms. Rockwell:

As per our phone conversation last week, we appreciate you extending the time for us to reply, since unfortunately the President and BOD did not receive your initial notice back in the beginning of May. Thank you!

We have attached the complaint letter and supporting documentation. We have included the Audits and Budgets you requested plus some additional notes and background information, in an attempt to provide further information and clarification concerning these issues.

To answer the 5 issues put forth in your letter dated May 1, 2013, please find the following:

Item 1: For 2009 and 2010 – we agree, reserve items were not properly funded, and were pooled in late 2009 by the then Board (Mr. Callinan, serving as president and treasurer, – in particular) at that time, in spite of the legal advice to the contrary for past reserve items at that time. (Copy of legal advice attached). In 2010 the Board voted to reestablish the line item reserves. Mr. Callinan was treasurer at the time and had total and effective control of the Board and the Association Finances by virtue of a strong hand and a three man vote. Vesta /CRM was our management company for the years 2010 and earlier. A formal, independent audit was not conducted during these years. When a new Board took over in 2011, the new treasurer (Irene Creecy – statement enclosed) determined that it was impossible to make any effective decisions concerning the Reserves or the accounts in general until she knew what the amounts in the respective accounts should be. She hired the accounting firm of Kane and Co, to conduct such a review and audit. Kane and Company came back to us and said that the records were insufficient to provide an accurate opinion on the financial status of the Association. At this time we sought the advice of the DBPR, several attorneys as well as the opinion of our new independent auditor. Many of our members wanted a full forensic accounting review but while the records were a mess and many accounts were unsupportable we could see no evidence of wrong doing. The consensus of experienced people contacted, including the DBPR, was we needed to draw a line in the sand and move forward. Since 2011, all subsequent

Board of Directors and in particular the Treasurers', and our new Management Company, Leland Management, have been working hard to put the Association records and financial condition in good order. Kane and Company, for the year end 2012 provided us with our first unqualified audit. In 2012 we hired the firm of Drew Isaac to conduct an independent reserve study. In that study we discovered that not all reserve items had been properly reestablished. Since we understand we are not able to adjust these accounts, by taking money from one account to another without a unit owner vote, and we have never been able to obtain a membership quorum for any issue, we have started refunding these accounts at an accelerated rate. In summary our past performance is not perfect but we are making a concerted effort since 2011 to have all our records in order and conduct our association in accordance with our documents and state law.

Item 2: 2009 Audit – as far as we can see showed a \$ 15,260 balance at year end for 2008 for Pool & Spa Reserve, and showed \$ 13,812 at 1/1/09 and then eventually showed \$15,193 for Pool/Spa at 12/31/10 though in Operating Funds and not the Reserve Account. This was probably a part of the "re-constructive" attempt to "un-pool" Reserves, etc. We do not have means to discover the details for this without prior records.

Item 3: Timely funding of Reserves 2009 – as far as can be determined by the CPA's / Gloria Robinson reports dated 2/23/10 the Painting, Mechanical & Electrical, Pool and Spa, and Fences were NOT included in the 2009 audit / funding. We do not have any records to determine if funded in a timely manner back then.

2009 for \$26,028 and 2010 for \$24,360

The attached Balance Sheets show these amounts as "due to replacement funds" on them, as far as Leland Accounting can determine (after the fact) were for amounts that were either transferred from or spent from the Reserve Funds to cover Operating Expenses at that time, as directed by Mr. Jack Callinan and /or then BOD.

2011 Audit – attempt was made to re-allocate funds into appropriate straight-line Accts with new CPA – Kane & Co, DBPR's recommendations, and new management company – Leland Management.

2012 Audit eliminating the Wood Decking and Thompson Water TX was a Board decision to not use Thompson's over the Indian River on the docks, and when time came to replace the deck it would be with a composite material and not wood.

The Reserve and Operating Accounts approved in the final budgets "Were and Are" fully funded accordingly from 2011 forward to date.

Item 4: 2010 Pool & Spa and 2010 Clubhouse – we do not have the detail information to determine these items/ changes in that year. We do not have a full GL or accounting records to research this. Could it have been moved to Operating Expenses at that time under Pool Expense Account? Mr. Callinan was the treasurer in charge of the financial records and funding these accounts at that time.

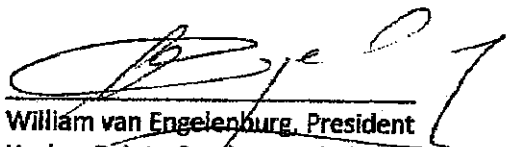
Item 5: 2010 and 2011 were qualified audits because of a lack of records by past management company and BOD. The management companies of CRM and VESTA are the ones that did not provide us with complete records of that time period and thus we cannot provide any. Vesta and BOD/Mr. Callinan were in charge of all the records at that time and they were not made available to other Board Members.

We do want to stress that for the last two years since the current BOD and Leland Management have been "on the job" we have been able to fully fund all Reserve and Operating Accounts, operate in the black, make

collections and improvements to Harbor Pointe a priority, vastly improve record keeping procedures and policies, and obtain unqualified audits by an independent CPA firm from that point forward.

We sincerely hope this helps to answer at least some of your questions and the issues in the letter of complaint. Some answers, unfortunately, are not available even to us. We look forward to discussing this with you once you have had a chance to review what we have sent. Awaiting your reply,

Respectfully submitted,



William van Engelenburg, President
Harbor Pointe Condo Association

Encl : 2009 – 2012 Audits, none available for 2011
2009 – 2013 Proposed & Adopted Budgets
Supporting notes/documentation by various Board Members concerning these matters