



May 11, 2022

Legal Action Against the Summit Park Homeowners Association

Nature of Legal Action. On April 25, 2022, the Summit Park Homeowners Association (“SPHOA”) received a letter (the “Legal Action” or “Demand Letter”), dated April 21, 2022, from the law firm of Snell & Wilmer, a copy of which is attached (Attachment 1). The Legal Action originated from the owners of a property located within the Summit Park Subdivision demanding a release under a Wrongful Lien claim and requested immediate removal by reference of their property found in the SPHOA’s 2019 Corporate Constitution (a similar document to the SPHOA’s Bylaws, but recorded separately from the Bylaws). The Demand Letter requested a release within 10 days and advised that if the SPHOA failed to release the lien, it would be subject to a fine of “\$10,000 or for treble actual damages proximately caused by the wrongful lien, whichever is greater, and for all reasonable attorney’s fees and costs.”

SPHOA Options and Response. Based on the nature of the Legal Action against the SPHOA, the SPHOA was forced to seek and retain legal counsel to assist and recommend an appropriate response to the landowner’s demand. The law firm of Rosing Davidson Frost was engaged due to their expertise on community association matters and real estate law.

The options that the SPHOA were provided by legal counsel to consider were as follows:

- 1) Fight the Legal Action in court. Whereas there was a relatively high probability that the SPHOA would prevail on such a challenge – especially in light of a very recent ruling by the Utah Supreme Court (*WDS v. Hi-Country Homeowners Association*, filed April 28, 2022) that appears to have narrowed the definition of what constitutes a Wrongful Lien, the SPHOA was made aware that any time a matter goes before a court, it is expected that potentially significant additional legal costs and time (on both sides) would be incurred to proceed ahead with this type of option.
- 2) Dissolve the SPHOA with the assistance of legal counsel. The SPHOA would be dissolved through a dissolution process that would also likely involve a legal process dictated by a court since there is currently no documented directive on dissolution found in the existing SPHOA’s governing documents. This action would essentially resolve the Legal Action since the SPHOA would no longer exist and any alleged property encumbrances would similarly be considered null and void. Similar to Option 1, this option too would be expected to potentially incur relatively high expenses due to additional legal fees and the time incurred for the SPHOA to be fully dissolved as a legal entity.
- 3) With the assistance of legal counsel, dissolve the existing SPHOA and reincorporate under the *Utah Revised Nonprofit Corporation Act* (Utah Code Title 16, Chapter 6a). This newly incorporated entity would operate as an association of community members, whose membership would be purely voluntary and supported through tax-deductible contributions / donations – essentially the equivalent of membership dues but not called dues since the corporation would not exist as a legally defined homeowners association (as defined under the *Utah Community Association Act* (Utah Code Title 57, Chapter 8a). Whereas there would be no CC&Rs associated with this newly created entity, as envisioned, there would exist a very similar document, referred to as something like the “Neighborhood Code of Conduct.” Such a document, like the existing CC&Rs, would provide a degree of protection for those looking to protect their property values. There are obvious subsequent additional legal costs associated with proceeding ahead with this type of reorganization.



Summit Park Homeowners Association

- 4) Provide the landowner named in the Demand Letter a document that absolves them of any construed lien that the SPHOA's Constitution contains.
- 5) Provide a blanket document that removes *all* properties under which the SPHOA's Constitution purports to have a defined lien.

Based on the preceding options, and after very careful consideration that included many questions being asked and answered by legal counsel, the Board of Directors of the SPHOA elected to address the immediate demand of the landowner and released them of the alleged lien on their property. Because this legal issue continues to be fluid, an appropriate moving-forward action has yet to be finalized and any type of final recommendation to the community will only be made at such time that any additional alternatives are considered and the existing alternatives (outlined above, but excluding No. 4) are fully vetted and considered as what constitutes the most appropriate follow-up action(s).

Obviously, we regret that this land owner took such an action and that funds originally intended for the betterment of the community – and supported by active members of the SPHOA that choose to support our community-wide activities – will now have to be diverted to address this legal matter. We recognize that many of you may have many questions as a result of this very recent event. Please be patient as we work through the process and recognize that the Board remains stalwart in doing only what is best for the majority of landowners in Summit Park. Some additional questions and answers that we can answer at this time are attached (Attachment 2).

We will continue to be transparent to the community as this legal matter proceeds ahead, and thank you for your understanding and to those that actively support the programs and activities of the SPHOA.

The Board of Directors of the SPHOA



Attachment 1 – Demand Letter

Snell & Wilmer
L.L.P.
LAW OFFICES

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Salt Lake City, Utah 84101-1547
801.257.1900
www.swlaw.com

Wade R. Budge
wbudge@swlaw.com

April 21, 2022

VIA CERTIFIED MAIL AND US MAIL

Summit Park Homeowners Association
c/o Registered Agent

PO Box 980754
Park City, UT 84098

Re: Statutory Notice and Demand of Release for Wrongful Lien

This firm represents Charles P. Williams and Rebecca A. Diehl (collectively, "Owner"), who own certain real property located at approximately 505, 515, and 525 Crestview Drive, Park City, UT 84098 (Lots 82, 83 and 84 of the Summit Park Plat "H", as amended; Parcel Id. Nos. SU-H-82, SU-H-83 and SU-H-84) (collectively, the "Property").

We are writing on behalf of Owner to demand the release of a wrongful lien that the Summit Park Homeowners Association (the "Association") caused to be recorded against the Property. By this letter, Owner hereby demands the immediate release of that certain Constitution of the Summit Park Homeowners Association, recorded on January 11, 2019 as Entry No. 01104627 with the Summit County, Utah Recorder's Office ("Constitution"), a copy of which is attached to this letter. Pursuant to Utah Code § 38-9-203(2), Owner hereby demands that the Association release the Constitution from the Property, which document constitutes a "wrongful lien" as defined in Utah Code § 38-9-102(12), no later than ten (10) days from the date of this letter. We are aware of the Restrictive Covenants recorded July 6, 1960, but we note that that recording does not create an owner's association, does not create rights for the benefit of an owner's association, and does not allow an association, including the Association, to claim rights over the Property under the Utah Community Association Act.

ALBUQUERQUE BOISE DENVER LAS VEGAS LOS ANGELES LOS CABOS ORANGE COUNTY
PHOENIX RENO SALT LAKE CITY TUCSON WASHINGTON, D.C.



Snell & Wilmer
— L.L.P. —

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Based on the foregoing and Utah law, the Constitution is a wrongful lien against the Property because, among other things, it was not: (i) expressly authorized by Utah Code § 38-9-101 *et seq.* or a state or federal statute; (ii) authorized by or contained in an order or judgment of a court of competent jurisdiction; or (iii) signed by or expressly authorized by a document signed by the fee simple owner of the Property. Utah Code § 38-9-102(5)(b).

Please be advised that if the Association fails to release the lien, the Association will be liable under Utah Code § 38-9-203 for \$10,000 or for treble actual damages proximately caused by the wrongful lien, whichever is greater, and for all reasonable attorneys' fees and costs.

If the Association desires to cooperate in releasing the Constitution from the Property, please contact me immediately and provide to me a copy of the recorded release. If those causing the Constitution to be recorded fail to provide notice that the Constitution has been released within ten (10) days' time, we will obtain a court order requiring its removal and look to the Association, and those working in concert with the Association, for all damages, fees, and costs arising from this wrongful lien.

Respectfully,

SNELL & WILMER L.L.P.

Wade R. Budge

WRB:hks

Enclosure



Attachment 2 – Some of Your Questions Answered

Q: What exactly is a “Wrongful Lien?”

A: First, be aware that the following answer is based on a layperson’s understanding of the nature of a Wrongful Lien. It is our understanding that the original intent of the Wrongful Lien statute (Utah Code 38-9-203) was to stop people from placing nonrelevant liens on properties owned by people that they did not like or wanted to create problems for them, and the Wrongful Lien statute was therefore initially intended to address that type of unjust and potentially criminal activity. Over the years, that original intent, however, has been broadened to include many other potential matters. The more modern view is that a “wrongful” lien is a *“lien that is construed not to be authorized by statute, a court order, or an authorizing document signed by the owner of a property.”* It should be made clear that the issue presented in the Demand Letter does not relate to any type of monetary lien, including the SPHOA intentionally or maliciously placing a “lien” on the property to secure some sort of debt. Whether this particular Legal Action has merit would be up to a court to ultimately decide, but a recent ruling by the Utah Supreme Court (*WDS v. Hi-Country Homeowners Association*, filed April 28, 2022) suggests otherwise. It is our understanding that the SPHOA’s Constitution has allegedly created a “lien” on the properties by virtue of certain language found in the Constitution, but that understanding may not be aligned with actual fact. As previously mentioned, legal advice suggests that the validity of such a claim is debatable since it is being based on a series of legal interpretations that may or may not be aligned with legal intent.

Q: Has the SPHOA been provided an estimate of its legal costs associated with the Demand Letter?

A: Yes. The law firm of Rosing Davidson Frost estimates the cost to address the Legal Issue presented in the Demand Letter will run between \$3,000 and \$5,000. This includes the cost of research, document preparations, and correspondence and discussions. The rate for senior legal advice is \$350/hr. The Board has asked that as much of the efforts on behalf of the SPHOA be performed by those that bill out at a lower billing rate (such as paralegals) to try to minimize costs. Long-term legal advice, however, may be considerably more than the baseline estimate, as additional legal actions will likely be incurred to reach a long-term solution.

Q: How will the SPHOA pay to address this Legal Issue?

A: Money to pay for legal representation is coming from the SPHOA’s “general” fund. Typically, the SPHOA spends approximately the same amount that it takes in from membership dues on an annual basis, and over the 65 years that the SPHOA has existed, the SPHOA’s current financial base has remained relatively stable in recent years and currently resides at approximately \$45,000. Funding for SPHOA-sponsored community programs, events, and activities comes almost exclusively from our membership that actively supports its HOA by payment through annual dues of \$50.00/year, so addressing this issue obviously represents a significant impact to those that voluntarily support their HOA and benefit from what it does and offers to all those that reside in our community.

Q: Will this financial impact affect this year’s Dumpster Days or the various fire reduction programs and community-wide activities associated with reducing the possibility of a wildfire impacting our community through the FireWise® and related programs that the SPHOA actively sponsors and assists with defraying fuel reduction programs offered to community members?

A: The short answer is that the Board has yet to make that determination, but it is more likely than not that, in the short-term, it will indeed have a real impact. Dumpster Days 2022 may be delayed from the currently



anticipated June 11th and 12th until later in the year (or be postponed in 2022) until such time when a better understanding of the overall financial impact of this legal matter is better understood. The impact to the FireWise® program is also yet to be fully ascertained, but it is also likely to be adversely impacted by not providing the same level of financial assistance to landowners as previously anticipated in reducing dead trees and brush that serve as additional fuel sources within our community. Since Dumpster Days is coming up quickly, a decision will be made shortly on whether it needs to be delayed. The cost to the SPHOA in sponsoring Dumpster Days is between \$6,500 and \$7,000 annually, and financially, it may not make sense to be allocating those types of funds at this time in light of present and potential future legal actions.

Q: Was the SPHOA previously aware of the potential for a Wrongful Lien action?

A: The SPHOA, nor any of its current Board members, were totally unaware that it was potentially open to a Wrongful Lien action, and it is unknown if prior officers of the SPHOA were aware of any real or potential issues with the governing documents, but did not recognize them at the time or chose instead to ignore them. Final *legal* review to the proposed revisions to the existing corporate bylaws and CC&Rs that have been circulated in draft form for community input would likely have identified the potential flaw, but the SPHOA is likely still months away from getting to that point of a final legal review of those documents. As an additional point of clarification, the existing 2019 corporate constitution and bylaws, along with the revised CC&Rs that are in place for Plats A and B that were released in 2000 and 2013, respectively, were developed by legal counsel. The Demand Letter, however, references a property located in Plat H, and the tie-in between the Constitution and the CC&Rs, which is relevant in this matter, involve CC&Rs that were written 62 years ago – in 1960. It is unknown if the 1960 CC&Rs involved legal counsel in their development or not.

If you care to keep reading, presented below are some additional questions and answers that address some of the queries that have been received by the SPHOA regarding the DRAFT proposed changes to the SPHOA's bylaws and CC&Rs.

Q: Where are copies of the draft Bylaws and CC&Rs found? I can't find them so the SPHOA must have their reasons for hiding them from us!

A: Draft copies of the proposed updates to the bylaws and CC&Rs, along with a summary of proposed changes, were posted and have remained on the HOA's community website since mid-February, and by the number of inquiries we've had on them, it would stand to reason that many people have not had any problem locating them and providing meaningful suggestions over the ensuing months. They can be directly accessed through the SPHOA's website address at <https://SummitParkUtah.net/>.

Q: We don't need an HOA in Summit Park; in fact, we believe it actually lowers the cost of homes here!

A: The SPHOA certainly supports your right to an opinion, but the SPHOA, and probably many community members, would certainly be interested in having the evidence shared that supports that supposition. If true, we would totally agree that nobody would want to have their home values eroded due to the presence of an HOA in their neighborhood. What is interesting about that allegation is that there are approximately 370,000 HOAs located throughout the U.S., and assuming that each of those HOA's has a nominal 50 members, that sure represents quite a few folks that are actively willing to have an HOA operate in their neighborhood all while lowering their property values. Many people would agree that an HOA exists with



the goal of *increasing* property values, not lowering them. With an insanely low volunteer dues payment of \$50.00/year, many could also successfully argue that you get a lot of bang for the buck by your HOA, not the least of which is having one of Utah's most highly regarded Firewise® programs in place that has also provided additional benefit to community homeowners by allowing some properties that previously could not be insured against fire-related risks to once again become insurable after the insurance carrier is made aware that the community has in place a robust Firewise® program that is actively maintained and recertified on an annual basis.

Q: Most of the people living in Summit Park do not want anything to do with an HOA.

A: Yes, perhaps. Or perhaps not. It also depends on how one prefers to define the word "most." An interesting tidbit in that regard that may be of interest to our community is that when the Plat B CC&Rs were put out to vote on the revisions in 2000 on whether people living in that plat area wanted to approve them or not, an even 80% voted in favor of enacting them as they were presented. Now, we can't say that is representative of the community as a whole as it exists today and as demographics of our community has changed over the years, but it is telling in the potential overall support by our membership of having an HOA in Summit Park.

Q: Nobody is telling us what is going on around with the HOA around here, and we don't like the fact that these people [the Board, one presumes] are trying to hide something from us.

A: Yet another interesting comment. First of all, the current Board has made it a very high priority to answer questions that it receives in a very timely manner, so as questions come in, and the questions posed are presented with enough information to understand what the concern is about and how we may help, then they are answered in due order – and often at a level of detail that goes above and beyond simply answering the original question. All we ask is that people understand that Board members are all volunteers that have day jobs or other activities that require their attention, so at times, community members have to be patient. Now, we can't say that that was always the case in the past, but realize that community outreach is currently a very high priority for the HOA. In addition, the HOA has repeatedly asked our community to supply updated contact information to keep on file. When people pay HOA dues, such information is part of the submission process, but if you elect not to be part of the HOA, then there are few alternatives to have updated contact information placed on file. The HOA also prominently asked that the community supply current contact information in the 2022 Park Lark that went out to over 600 addresses, and in response, the HOA received less than 25 responders with their contact information. So, if you want to be kept informed, then please pass on your current email contact information so the HOA can keep in touch with you better.

Q: I don't understand why we need to change the Bylaws and the CC&Rs. What's wrong with what is currently in place?

A: This question has been addressed in numerous SPHOA correspondence to our community in the past, but suffice to say that the current bylaws need to be updated to reflect the current way that the HOA is operated, which the current version does not. As for the CC&Rs, the average age of them is over 50 years when they were first written, and much of the material found in them concentrated on architectural design restrictions. The proposed drafts were streamlined to remove almost all of the architectural restrictions and are limited to mostly relevant and current concerns of the greater community. The updates are also needed to address many issues not previously addressed or contemplated, so actual *volume* is not at all reflective of being equivalent to there being more restrictions. The Wrongful Lien issue is yet another example of why they need to be updated. Current legal thought is that CC&Rs should be reviewed and potentially revised every five years, so they remain in-step with current laws and are reflective of new and relevant concerns.



Q: I was told when I moved here that there was no HOA, only to find out that one exists after I moved in.

A: Not to sound trite, but isn't that statement something along the same lines of "But I was told that I didn't have to pay taxes on April 15th, so I didn't"? The Summit Park HOA has existed since 1957, so it sounds like the issue has nothing to do with your HOA, but rather your real estate agent, title company, or a lack of your own due diligence that failed you.

Q: The HOA stated that they do not enforce clauses found in the CC&Rs, and prefer that neighbors work out issues between themselves. So why have any CC&Rs in the first place?

A: The first part of that question is accurate, the HOA does not perform any actual enforcement action found in the CC&Rs, and as far as we know, that is the way it has always been. Right or wrong – and there are certainly residents that would prefer to have active enforcement of the CC&Rs – the HOA's approach is not to meddle in what owners want to do with their properties. To answer the second part of that question, what CC&Rs do, however, is 1) provide a mechanism for people to either bring an action against someone who they believe is not following content within the CC&Rs (for example, as stated in Section 13 of the Plat H [and many other of the existing CC&Rs] or 2) provide a mechanism where an actual law is not being broken but there are CC&Rs to create a backstop in the event of the actions of some landowner. Two examples to clarify what is meant by that last statement: Some of you may recall that burned down building on the corner of Aspen Drive and Parkview that existed for several years for all those going in and out of Summit Park before that property was finally sold and rebuilt. A sizeable number of complaints came in to the HOA about what an eyesore it was and whether the HOA could do anything about it. Yet, because there was no clause in the CC&Rs that called for the owners to have it razed, nothing could be done about it since it was also deemed not to represent a safety concern by the County. Another example is where the County Sheriff's Department has been called to break up a rowdy crowd at a short-term rental property where people were parked in the yard and trash was strewn about. The Sheriff's Department could talk to the renters (which they did), but since no laws were being broken, nothing more could be done on their end. They asked if there were CC&Rs that could be drawn upon to assist them in having the issue resolved, but with none in place that addressed that specific concern, then there was nothing more that they could do on behalf of neighboring property owners.

Q: The HOA is not at all being transparent on what is going on with the proposed documents and they haven't had a public meeting in over two years, so they must be doing something behind our backs.

A: First of all, there has been something called a pandemic that has taken place over the past two years. Second, the SPHOA no longer has access to a local meeting place in which to hold meetings. Now, if there are volunteers that would allow access to their residence for meetings to be held, that would be a great and very viable option, but none have been forthcoming. Another option is to hold meetings at a public venue, such as the County Library. That has an expense associated with it, and may further reduce the number of potential attendees due to its distance from the community. In the past, a typical meeting would garner at most something like a half dozen attendees, many of whom only showed up to complain or discuss a particular issue and then leave. You must also understand that the directors of our HOA already spend an inordinate amount of time volunteering on behalf of the community, and having public meetings at off-site locations is yet another chunk of time taken away from our daily lives. An annual meeting is required by the HOA for membership to attend, which we do. The HOA posts meeting minutes and financial data on a regular basis too so people can follow what is going on (albeit, most meeting discussions are pretty boring). Yes, there is a lag time between when the meetings are held and when the minutes are posted, but that is due to a procedural requirement that previous meeting minutes are only approved and subsequently posted at the next scheduled meeting. One of the best ways to keep in touch with the HOA is to use email for your



queries, and for those emails that are not derogatory and explicit in what is being asked, they are answered relatively promptly.

Q: When will we be allowed to vote on the revised CCC&Rs?

A: The original thought by the Board was to hold a vote in the Spring, but that has been delayed due to various inquiries and suggestions that have come in, so it only makes sense to delay until a more appropriate time, and there is no reason to rush it. There are already several salient changes being made. Final drafts will then go through a legal review prior to final drafts being posted and a vote scheduled.

Q: Why are we not being allowed to vote on the corporate bylaws?

A: Whereas that may end up being the case, a final determination on whether a vote is required to enact the bylaws has not yet been determined, but there are reasons why it probably will not be the case. Think of it this way: Does staff and employees of a company vote on how the company that they work for operates, or if you own your own company, do you allow your staff and employees to vote on how you operate your company? The answer is no, or perhaps very rarely (*"and if so, then we want to vote to have a clause placed in the company's bylaws that all profits made by the company will be distributed among all staff and employees!"*). All companies legally must have some form of board of directors in place, and the reason for that is that those directors not only know their company best, but they also have a fiduciary responsibility to do what is best for the greater needs of the company (or community, as may be the case). The SPHOA's Board operates no differently than that on behalf of its membership. You should also be aware that since the inception of the SPHOA in 1957, amendments to the corporate bylaws has always remained the responsibility of the Board to make decisions on how the SPHOA operates and how it is operated on behalf of its members.

Q: Who can vote on the CC&Rs?

A: The current set of governing documents present different interpretations on that question. Some documents say that only active (paying) members are only allowed to vote, others say that renters have a right to vote, and still others documents present different views on the number of votes allowed per property, the percentage of votes required to pass a measure, or the number of votes allowed if one owns multiple lots in the community. In other words, it's kind of a mess without having a definitive answer to rely upon. The general consensus is that all those that own property should have a say in the adoption of community-wide CC&Rs, but a final determination as to eligibility requirements must still be sorted through (for example, should renters be allowed a say in the makeup of CC&Rs that property owners must abide by, but renters do not?).

Q: The proposed Bylaws state that it only takes two Board members to vote on a matter for something to pass!

A: No, it does not, and not even close. For those that say that or believe that, please reread Article 3 of the proposed Bylaws on voting. Under Section 2 of that proposed Article, it states: *"All **Board** meetings that do not meet **Board** quorum requirements; that is, where three or less eligible **Board** members are available, then official **Board** decisions on behalf of the **SPHOA** cannot be made. Any **SPHOA** meeting that does not have a quorum of eligible **Board** members present can still be conducted; however, no decisions before the **Board** can be made other than certain procedural actions. When a quorum of eligible **Board** members is not met, then all business before the **Board** shall be postponed until such time that a quorum of **Board** members are present or available (and thereby avoiding those instances whereby opponents to a proposal or action before the **Board** can effectively block an action before the **Board** by walking out or by not attending the meeting).* Section 4 of that Article further defines what level of votes are needed which breaks it down into



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three separate procedural voting types, depending on importance of what is being voted on; for instance, Voting Procedure 3, *“requires a vote of approval by a quorum of eligible and currently elected **Board** members, with a minimum of four members present to vote. Unless otherwise designated, if the vote results in a tie, the current **Board** Chair shall represent the deciding vote.”* To be clear, there continues to remain questions on whether the Board should be allowed to make decisions without a community vote, or whether the community needs to vote on all matters before the SPHOA, but there is a definite difference between having a membership vote take place and having the Board take a vote based on community input. Admittedly, it’s a thorny question, but not all that different than having public officials deciding on issues as your representatives since governments too need to weigh the cost and time needed on issues where an issue is being sent out to the public to vote on. Traditionally, since the Board has the fiduciary responsibility of keeping the best interests of the community in mind, and to avoid the logistical nightmare of multiple membership votes taking place, the Board needs to act on various matters in a timely manner, so there has to be a give-and-take in this regard.

The Board is interested in any thoughts and input on the answers to these questions. Please let us know!

A Not-So-Subtle Plea...

The SPHOA is in need of adding additional members to its Board of Directors and/or volunteers that can assist with some specific SPHOA duties or sponsored activities. Please contact us if you are interested.

General requirements and expectations are as follows:

- Must be willing to donate approximately 2 to 4 hours of your time a week towards HOA activities, although that can vary widely (up or down) over the course of a year. No financial compensation is provided, and whereas all time is strictly on a voluntary basis, you will generally be expected to commit to the needs of the Board and the community and not just do it as your own time may allow.
- Must be open minded and not have any individual agendas that you may wish to pursue since the SPHOA only operates on behalf of its membership and the greater community as a whole.
- Must have the wherewithal and fortitude to work independently on certain HOA-related activities, but understanding that the Board works as a group and bases decisions on input from *all* members from within that group and from the community at large.
- Must be willing to take a degree of criticism and not let it get to you. Said another way, you must at times have relatively thick skin.
- There is no time period commitment (presently recorded as three years), but the general expectation is that you should commit for at least one year of service.
- One immediate need is to assist with answering email queries that come in, as we really need assistance in that area.
- On the bright side, being a Board member or a volunteer looks great on one’s resume, so please consider it if the thought of giving back to your community is something that you would like and want to do.