



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: UNIVERSITY LITIGATION CIVIL ACTION NO. 13-C-7000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REQUIRING NOTICE TO PLAINTIFFS WHO HAVE NOT
RESPONDED TO NOTIFICATION OF UNIT OWNERS
REGARDING MEDIATION ON OCTOBER 28, 2013**

On July 24, 2013, the Court ordered Plaintiff University Commons Riverside Homeowners Association, Inc., on Its Own Behalf and on Behalf of its Members and Individual Unit Owners (HOA) to individually notify every person or entity in the chain of title for the 84 units comprising the University Commons Riverside Condominium Complex (UCR) on or before August 9, 2013, regarding:

- a. the existence of this lawsuit;
- b. their potential claims against Defendants for alleged damage to their unit;
- c. that they are currently represented by the HOA;
- d. the fee arrangement with counsel for the HOA;
- e. their ability to “opt out” of representation by the HOA and seek separate representation; and
- f. that this lawsuit is their only opportunity to bring suit against Defendants for alleged damage to their unit.

The HOA was also required to notify every person or entity in the chain of title for the 84 units comprising the UCR that a declaratory judgment action has also been filed on their behalf seeking insurance coverage. *Order Regarding Notification of Unit Owners* (TID 53318748). On August 7, 2013, the HOA filed a Notice of Compliance with the Court’s

Order. *Notice of Compliance* (TID 53519420). Thereafter, the HOA filed a *Notice of “Opt Outs” and No Responses* on September 27, 2013 (TID 54298807), identifying those Plaintiffs who have (1) chosen not to pursue their individual claims and have, therefore, “opted-out” or (2) who have not provided any response to the Notification of Unit Owners.

Those Plaintiffs identified as “No Responses” are hereby placed on notice that mediation of the University Commons Litigation shall be conducted **on October 28, 29 and 30, 2013**, at the Lakeview Resort and Conference Center, One Lakeview Drive, Morgantown, West Virginia 26508. **Mediation will begin at 9:00 a.m. on, October 28, 2013**, and will be conducted by Lead Resolution Judge Booker T. Stephens, with the assistance of Resolution Judge John A. Hutchison. *Order Regarding Mediation and Mediation Statements* entered and e-filed on August 13, 2013 (TID 53713392).

Pursuant to the Mediation Order, each individual Plaintiff is required to attend mediation in person only on October 28, 2013, provided the Plaintiff has executed an authorization giving their attorney full authority to act on their behalf, including full authority to negotiate settlement of their case. See Paragraphs 2-3. As further set forth in Paragraph 2 of the Order, **“FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL, ABSENT GOOD CAUSE SHOWN.”**

Counsel for Plaintiffs is **ORDERED** to mail a copy of this Notice to all “No Responses” listed in Exhibit A to the *Notice of “Opt Outs” and No Responses* e-filed on

September 27, 2013 (TID 54298807), via certified mail, return receipt requested, at their last known address.

It is so **ORDERED**.

ENTER: October 2, 2013

/s/ Booker T. Stephens
Lead Resolution Judge
University Commons Litigation