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ATTORNEYS AT LAW

2025 SUMMARY OF ARIZONA COMMUNITY ASSOCIATION LAW

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I. WHAT IS A HOMEOWNERS OR COMMUNITY ASSOCIATION

A. What is a Homeowners Association

A homeowners association ("Association") is a common-interest community consisting of landowners in a residential neighborhood (or sometimes commercial property) that has restrictive covenants placed on the property. Owners become subject to restrictive covenants imposed on the real estate encompassing the Association and contractual provisions located within the restrictive covenants, regardless of express acquiescence.[1]

Over 2.2 million residents live in one of the approximately 9,900 community associations in Arizona (more than 30% of Arizona residents) and approximately 74.1 million people live in community associations throughout the United States.[2]

Arizona law divides Associations into three (3) basic types: Condominiums,[3] Planned Communities,[4] and "others."

1. Definition of Planned Community

As defined under A.R.S. § 33-1802(4), a Planned Community "means a real estate development that includes real estate owned and operated by […] a nonprofit corporation or unincorporated Association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the Association for these purposes."

Summarily, a Planned Community is an Association where deed restrictions are placed on property owned by owners who are required to be members of the Association.

2. Definition of Condominium

A Condominium under A.R.S. § 33-1202(10) is defined as "real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners."

In essence, a Condominium is a community Association in which the individual owners own an undivided interest in the common area. The common area is property to be equally enjoyed by the members of the Association.

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[1] *See, Lacer v. Navajo County*, 141 Ariz. 392, 394 (App. 1984). "When a grantee accepts a deed containing restrictions, he assents to those restrictions and is bound to their performance as effectively as if he had executed an instrument containing them."

[2] *The Community Association Fact Book, National and State Statistical Review for 2021*: Fact Book 2021 Dashboard - Foundation for Community Association Research (caionline.org).

[3] *See*, Arizona Condominium Act, Arizona Revised Statutes ("A.R.S.") §§ 33-1201, et seq.

[4] *See,* Arizona Planned Communities Act, A.R.S. §§ 33-1801, et seq.

3. Definition of Real Estate Cooperative

A corporation owns the property that makes up the cooperative. Typically, the property is a building. The owner purchases a shared interest in the corporation and with that purchase, the owner has a right to occupy a portion of the building. This portion is generally called an apartment. Anything outside the apartment becomes the common area maintained by the corporation.

4. Townhomes, Patio Homes, and Cluster Housing

These are all marketing names for different types of housing products. To know what type of community exists, it is necessary to know how the common area is structured.

II. STATUTES THAT GOVERN HOMEOWNERS ASSOCIATIONS

A. Arizona Planned Communities Act

The Arizona Planned Communities Act is found in Arizona Revised Statutes ("A.R.S.") Sections 33-1801 *et seq*. Planned communities must have property owned by the association, and mandatory membership of the owners of separate lots in an association with the power to impose assessments.

B. Arizona Condominiums Act

The Condominium Act is found in A.R.S. § 33-1201 *et seq*. It applies to all condominiums, whenever formed.

C. Arizona Nonprofit Corporations Act

Arizona's Nonprofit Corporation Act is found in A.R.S. §§ 10-3101 through 10-11702 *et seq* and is applicable to those incorporated associations.

III. DOCUMENTS THAT GOVERN HOMEOWNERS ASSOCIATIONS

Governing documents of homeowner Associations are divided into two (2) basic categories: (1) documents that restrict the use of the property or the behavior of residents concerning the property; and (2) documents that govern the corporate entity embodying the Association. Association documents that restrict the use of the property or the behavior of owners concerning the property are:

1. The Declaration of Covenants, Conditions, and Restrictions;
2. The Rules and Regulations; and
3. Architectural Guidelines.

Association documents that govern the corporate entity embodying the Association are:

1. The Articles of Incorporation;
2. The Bylaws; and
3. Resolution of the Board of Directors.

A. Restrictive Covenants

The Merriam Webster Dictionary defines a restrictive covenant as "a covenant acknowledged in a deed or lease that restricts the free use or occupancy of property (as by forbidding commercial use or types of structures)." In the context of homeowner associations, restrictive covenants and deed restrictions constitute a "contract between the subdivision's property owners as a whole and the individual lot owners." *Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631, 634, 2 P.3d 1276 (App. 2000). Where a grantee purchases a property encumbered by restrictive covenants, that person is bound to perform them. *Heritage Heights Home Owners Association v. Esser,* 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977); *see also, Johnson v. Pointe Community Ass'n, Inc.,* 205 Ariz. 485, 490-91, 73 P.3d 616, 621-22 (App. 2003) (A planned community association must comply with planned community documents.).

The "contract" discussed above usually comes in the form of homeowner association governing document known as the Declaration of Covenants, Conditions, and Restrictions, the Rules and Regulations; and the Architectural Guidelines.

1. Declaration of Covenants, Conditions and Restrictions

The Declaration of Covenants, Conditions, and Restrictions (commonly referred to as the "Declaration") is a document that creates a scheme of enforceable covenants and restrictions that run with a property. Both the Condominium Act[5] and the Planned Communities Act[6] have defined terms for the Declaration. The Condominium Act contains requirements that require certain provisions be incorporated into a condominium's Declaration.[7] As a document that places restrictions on property, the Declaration must be recorded with the applicable county recorder.

2. Rules and Regulations

Most Declaration allow Associations to draft and adopt reasonable Rules and Regulations that help explain the restrictions found in the Declaration. Arizona law allows Associations to draft and enact reasonable Rules and Regulations related to governing the common area property only.[8] The Rules and Regulations are usually developed by the

[5] A.R.S. § 33-1202(13).
[6] A.R.S. § 33-1802(3).
[7] A.R.S. § 33-1215.
[8] *See*, A.R.S. § 33-1242 (for Condominiums) and the Restatement (Third) of Property: Servitudes § 6.7(3) (2000) (for Planned Communities). *See also*, *Wilson v. Playa de Serrano*, 211 Ariz. 511, 123 P.3d 1148 (App. 2005) ruling that community

Association's Board of Directors and have the same enforceability as the Declaration, even though the Rules and Regulations for the most part are not recorded with the county recorder.

Rules and Regulations may only explain regulations found in the Declaration. Rules and Regulations may not contradict provisions of the Declaration, nor may they add restrictions that are not found in the Declaration unless the Association's Declaration allow the Association's rules and regulations to add additional restrictions to the Declaration.[9] If Rules and Regulations conflict with the Declaration, then they are generally unenforceable.

3. Architectural Guidelines

Architectural Guidelines also derive their authority from the Association's Declaration. The Architectural Guidelines usually provide a framework for the decision-making process of an Architectural Committee. The Architectural Guidelines have the same enforceability as the Declaration, even though they are usually not recorded with the county recorder.

B. Corporate Governing Documents

1. Articles of Incorporation

The Articles of Incorporation establish the Association as a separate legal and corporate entity and must meet certain statutory criteria found in the Arizona Nonprofit Corporation Act.[10] The Articles of Incorporation constitute the corporate charter and are filed with the Arizona Corporation Commission.

2. Bylaws

The Bylaws of an Association set out the procedures for the internal government and operation of the Association.[11] The Bylaws guide the Association concerning how owners may vote regarding corporate issues. The Bylaws also regulate the conduct of the Association's Board of Directors as well as outline how an Association's Board of Directors is elected.

3. Resolutions

Corporate resolutions are decisions of the Association's Board of Directors that are reduced to a formal written document. Resolutions usually contain official written policies and procedures of the Association such as an enforcement policy or an assessment collection policy.

Associations may not place restrictions on the use of individual units or lots via rules and regulations, unless the community Association's Declaration provide it with the ability to develop rules that reasonably regulate activity in units or on lots.

[9] Some Declaration allow the Association to create rules and regulations that can add additional restrictive covenants not expressly provided for in the Declaration. These types of provisions are rare though.

[10] A.R.S. § 10-3202.

[11] A.R.S. § 10-3206.

IV. CORPORATE GOVERNANCE OF ASSOCIATIONS

Pursuant to the Planned Communities[12] Act and the Condominium Act,[13] an Association can be either an incorporated entity or an unincorporated association of owners. The vast majority of Associations in Arizona are organized as Arizona Non-Profit Corporations.

If an Association is incorporated as an Arizona Non-Profit Corporation, the Association will be subject to the Arizona Non-Profit Corporations Act[14] and will be usually taxed as a 501(C)(4) Non-Profit entity.

A Non-Profit Association is comprised of two basic actors; the Members that compromise the Association and the Association Board of Directors.

A. Association Board of Directors

Pursuant to Arizona Law[15] and most Association Articles of Incorporation and Bylaws, Associations must have a duly elected Board of Directors. The Board of Directors serves to operate the Association and is the primary executive source or power.

Directors and Officers of an Association are charged with a "fiduciary duty" to the Association. The Board's "fiduciary duty" may be broken down into two distinct duties: (1) the duty of care; and (2) the duty of loyalty.

Directors have an obligation to exercise reasonable care in making decisions on behalf of the Association. This obligation is referred to as the duty of care. To meet the duty of care when making decisions concerning Association issues, the Association Board of Directors:

1. Must act in good faith, in a manner that he or she believes to be in the best interest of the Association and its members;
2. Must make decisions that any other reasonable director would make in the same situation or circumstances;
3. Must exercise discretion within the scope of their authority under relevant statutes, covenants and restrictions;
4. Must treat members equally and fairly; and
5. Must maintain and repair the Association's common area property.[16]

[12] A.R.S. § 33-1802(1).
[13] A.R.S. § 33-1241.
[14] A.R.S. §§ 10-3101 through 10-11031, et seq.
[15] A.R.S. § 10-3830.
[16] *See*, *Tierra Ranchos Homeowners Ass'n v. Kitchukov,* 216 Ariz. 195, 204, 165 P.3d 173, 178 (App. 2007).

The above concept is also discussed in the "business judgment rule" which is found in both Arizona case law[17] and in A.R.S. § 10-3830 of the Arizona Nonprofit Corporation Act.[18] The business judgment rule states that a Board member will have met his or her duties when he or she acts "in good faith[,] with the care an ordinarily prudent person in a like position would exercise under similar circumstances, [and] in a manner the director reasonably believes to be in the best interests of the corporation."[19]

This rule also protects Board members from personal liability if they make a decision after relying on "information, opinions, reports or statements, including financial statements and other financial data," received from "legal counsel, public accountants or other person as to matters the director reasonably believes are within the person's professional or expert competence."[20] In other words, if the Board's decision ends with a bad result – even a financial loss – the directors should be shielded from claims of personal liability if the decision was made pursuant to the advice of the Association's attorney.

Another duty relating to the fiduciary responsibilities of a member of an Association Board is a duty of loyalty. Directors should have undivided loyalty to the Association. This duty prohibits directors from receiving a benefit for serving on the Board at the expense of the Association or its members. This duty of loyalty is breached when a Board member acts in his or her own interest or with a conflicting interest.[21]

One example of a breach of the duty of loyalty is when a Board member has a financial interest in a transaction or decision before the Board and fails to properly follow Arizona law.[22] Another example of breaching the duty of loyalty or fiduciary duty is to discuss with other members matters that are either protected by attorney/client privilege (*i.e.,* correspondence, communications or advice from legal counsel) or matters that are reserved for executive session Board meeting discussions provided in Arizona statutes.

To avoid breaching this duty of loyalty, Board members should consider and ensure the following:

1. Enforce the governing documents equally, not selectively, and without regard to whether the owner is a neighbor, friend or relative;
2. Fully disclose any potential conflict prior to any deliberations;

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[17] *See, Tierra Ranchos Homeowners Ass'n v. Kitchukov,* supra.
[18] If the community Association is a nonprofit corporation.
[19] Codified in A.R.S. § 10-3830 (Arizona Nonprofit Corporation Act - General standards for directors).
[20] *See,* A.R.S. §§ 10-3830(B) – (D).
[21] *See,* A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums) indicating that: "If any contract, decision or other action for compensation taken by or on behalf of the Board of directors would benefit any member of the Board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board of directors or a parent or spouse of any of those persons, that member of the Board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the Board before the Board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this [section/subsection] is void and unenforceable."
[22] *See,* A.R.S. § 33-1811 (Planned Communities) and A.R.S. § 33-1243(C) (Condominiums).

3. Ask to be dismissed and do not participate in the decision-making process for any issues where a conflict may exist;
4. Maintain accurate records; and
5. Keep confidences (*i.e.*, attorney/client communications and results from executive session meetings).

Occasionally there will be factions and differences of opinions among members of the Board. Diverse positions among Board members can lead to progressive discussion and innovative administration. Board members, however, must understand that Board decisions are made by majority vote. If the minority is outvoted on an issue, the minority should attempt to provide unified support, unless the action taken by the majority is unlawful.

Since Board members serve at the will of the members of each community, the general membership of each community has the ability to remove Board members who the members believe are not taking action in accordance with the desires of the majority. As such, dissident Board members should use caution when challenging a valid decision of the Board majority.

B. Homeowner Association Meetings

There are four (4) main types of Association meetings: (1) meetings of the Association's Board of Directors; (2) meetings of committees of the Association; (3) annual meetings of the Association; and (4) special membership meetings of the Association.

All Association meetings must be held or originate in the State of Arizona.[23] This means that the origin of the meeting must be in Arizona. Teleconferences are still allowed so long as the call originates in Arizona.[24]

Also, except for limited circumstances that will be discussed below, Association meetings are open to all members of the Association or any person designated by a member in writing as the member's representative. Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Association meetings.[25] The Board may place reasonable time limits restrictions on those persons speaking during the meeting but must permit a member or the member's designated representative to speak once after the Board has discussed a specific agenda item but before the Board takes formal action on that item.[26]

Recent changes to Arizona statutory law applicable to Associations also serve to establish the State Legislature's public policy belief that Associations meetings should be as open as possible to Association member attendance. A.R.S. § 33-1248(F) (Condominiums) and A.R.S. § 33-1804(F) (Planned Communities) outlines the Legislature's "public policy" belief that an Association should err on the side of open meetings instead of closed meetings.

[23] A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
[24] A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
[25] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
[26] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).

This means that the Board of Directors and management must do all they can to ensure that Associations only meet in executive session or have an emergency meeting when the applicable statutory allowance is at play.

To implement its public policy beliefs, the Arizona Legislature has enacted a number of laws geared toward open Association meetings. Both the Arizona Planned Community Act and Condominium Act each state that agendas must be must be provided to all members at least 48 hours before the start of an Association Board meeting.[27]

Since there are a number of Arizona statutes that cover the various types of Association meetings, it is important to discuss each type in more detail.

1. Board Meetings

There are three (3) types of Board of Director meetings: (1) Regular Board Meetings; (2) Executive Session Board Meetings; and (3) Emergency Board Meetings. The most common type of Board of Director meetings are their Regular Board Meetings.

i. Regular Board Meetings

Regular Board Meetings are meetings in which the Association conducts general "day-to-day" business of the Association. Regular Board Meetings are usually held once a month or once per quarter. A Regular Board Meeting occurs whenever a quorum of the Board meets either formally or informally to discuss Association business.[28]

Unless otherwise stated in the Association's Bylaws, the Association must provide at least 48-hours' notice to owners of meetings of the Board.[29] Said notice shall be by "newsletter, conspicuous posting or any other reasonable means as determined by the Board of directors."[30] Also, Regular Board Meetings are open to all members of the Association or any person designated by the member in writing as the member's representative.[31]

Agendas must be provided to all members at least 48 hours before the start of an Association Board meeting.[32] Members or their designated representatives also have the right to speak at an appropriate time during the deliberations and proceedings of Regular Board Meetings.[33] Also, attendees of Regular Board Meetings have the right, subject to reasonable Association rules, to audiotape or videotape those portions of the meetings that are open to the members.[34]

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[27] A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
[28] A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
[29] A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).
[30] A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums).
[31] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
[32] A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
[33] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
[34] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums). *Infra* Page 6.

ii. Executive Session Board Meetings

Executive Session Board of Director Meetings are meetings of the Board that are exempt from the open meeting requirements. These meetings are closed to the members. Executive Session Board Meetings are held to discuss issues that are not required by statute to be discussed in a Regular Board Meeting. These meetings occur "behind closed doors" or outside the presence of, and without participation from, the members.

In addition, A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) both state:

> BEFORE ENTERING INTO ANY CLOSED PORTION OF A MEETING OF THE BOARD OF DIRECTORS, OR ON NOTICE OF A MEETING UNDER SUBSECTION D OF THIS SECTION THAT WILL BE CLOSED, THE BOARD SHALL IDENTIFY THE PARAGRAPH UNDER SUBSECTION A OF THIS SECTION THAT AUTHORIZES THE BOARD TO CLOSE THE MEETING.

The reference to "any closed portion of a meeting" in the first sentence of the statute refers to executive session Board of Director meetings. There are five (5) topics or issues that may be discussed in these executive session Board of Director meetings:

1. Legal advice from an attorney for the Board or for the Association;
2. Pending or contemplated litigation;
3. Personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association, including records of the Association directly related to the personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association;
4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the Association who works under the direction of the Association; and
5. Discussion of a member's appeal of any violation cited or penalty imposed by the Association except on request of the affected member that the meeting be held in open session.

A.R.S. § 33-1248(C) (Condominiums) and A.R.S. § 33-1804(C) (Planned Communities) will make it critical that an Association's Board and managers understand when an Association may meet in executive session. Also, it is advisable to have an agenda available to hand out to the members regarding an executive session meeting. When providing notice of your executive session meetings, the notice should also include an agenda.

iii. Emergency Board Meetings

An Emergency Board of Directors meeting may only be called to discuss business or take action that cannot be delayed for the 48 hours required for notice of a regular meeting of the Board of Directors. Thus, in order for the Board to conduct an emergency Board meeting, there must be a serious threat to life or property. Also, only "emergency matters" may be discussed at an Emergency Board meeting.[35]

The minutes of the Emergency Board Meeting must state the reason necessitating the emergency meeting. Also, the minutes of the Emergency Board Meeting shall be read and approved at the next regularly scheduled meeting of the Board.[36]

2. Association Committee Meetings

Association committees provide an opportunity for Association members to serve their community in specialized areas. They aid the Board of Directors in governing the Association. Association committees are functions of the Association's Board of Directors. Some common Association committees include Architectural Control, Landscaping, and "Welcome Wagon" committees.

Most Association committees meet on a regular basis. If an Association committee meets on a regular basis, the committee must meet in the State of Arizona.[37] Also, Association members or their designative representatives have the right to attend and speak at committee meetings.[38]

3. Annual Meetings of the Members

Arguably the most important meeting an Association is required to conduct is the Annual Meeting of the members. Not only do Association governing documents require Associations to conduct Annual Meetings, but Arizona law requires Associations to conduct an Annual Meeting at least once per year.[39]

i. Purpose of Annual Meetings

Annual Meetings are meetings of the members. Annual Meets are held to conduct the "business" of the membership and allow the membership to address their Association. In most Associations, Annual Meetings are conducted for three (3) main purposes:

1. To conduct member business;
2. To elect members to the Association's Board of Directors; and
3. To allow the members to address their Association.

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[35] A.R.S. § 33-1804(C) (Planned Communities) and § 33-1248(C) (Condominiums). *Infra* Page 7.
[36] A.R.S. § 33-1804(D) (Planned Communities) and § 33-1248(D) (Condominiums).
[37] A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).
[38] A.R.S. § 33-1804(A) (Planned Communities) and § 33-1248(A) (Condominiums).
[39] A.R.S. § 33-1804(B) (Planned Communities) and § 33-1248(B) (Condominiums).

ii. Conduct Member Business

Annual Meetings are forums where member business may be conducted. Member business can take many forms, including:

1. Approval of the previous year's Annual Meeting Minutes (see Section below on Annual Meeting Minutes);
2. Amendment of the Association's governing documents; and
3. Authorization increases in the annual assessments or special assessments.

Arizona law and most Association documents allow Member business at Annual Meetings. The challenge, however, lies in statutory requirements concerning absentee ballots, which will be discussed below.

iii. To Elect Members to the Board of Directors

The most important purpose of an Annual Meeting is to elect members to the Association's Board of Directors. Effectuating an election to the Board of Directors takes a great deal of forethought, especially in light of Arizona law.

A successful and legal election to the Board starts at least two (2) months prior to the Annual Meeting. This is due, in large part, to the requirements found in Arizona law.[40] Arizona law requires that Associations send ballots to all members of the Association.[41]

When drafting an absentee ballot, the Association must keep Arizona's statutory requirements in mind. Specifically, A.R.S. § 33-1812(A) sets out the ballot requirements for Planned Communities and A.R.S. § 33-1250(A) sets out the ballot requirements for Condominiums.

In relevant part, the above statutes on ballot requirements state that:

> If absentee ballots are used at an Annual, Regular or Special Meeting, then the members must comply with all of the following:
> 1. The absentee ballot will set forth each proposed action.
> 2. The absentee ballot will provide an opportunity to vote for or against each proposed action.
> 3. The absentee ballot is valid only for one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
> 4. The absentee ballot specifies the time and date by which the ballot must be delivered to the Board of directors in order to be counted, which will be

[40] *See.* A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).
[41] *See.* A.R.S. § 33-1812(A) (Planned Communities) and § 33-1250(A) (Condominiums).

at least seven days after the date that the Board delivers the unvoted absentee ballot to the member.

5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

If an Association provides for absentee ballots or ballots provided by some other form of delivery, the completed ballot must contain the name, address and signature of the person voting, unless the Association documents permit secret ballots, in which case only the envelope must contain name, address and signature. The ballots, envelopes and related materials must be retained and made available for unit owner or member inspection for at least one year after completion of the election.

If an Association chooses to permit electronic voting in addition to providing for votes to be cast in person and by absentee ballot, the Association must be sure to comply with the following:

1. The Association must provide **notice** to members that the vote will be conducted by electronic means.
2. The notice must include a "reasonable" procedure for members to obtain and cast a ballot through some other form of delivery, including U.S. Mail and fax transmission.
3. The online voting system must also meet all of the following requirements:
    a. Authenticates the member's identity;
    b. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit;
    c. Transmits a receipt to each member who casts an electronic vote; and
    d. Stores electronic votes for recount, inspection and review purposes.[42]

iv. To Allow Members to Address their Association

It is important to remember that the Annual Meeting is a meeting of the members, which means that the members should be provided with the opportunity to address their Board of Directors and other members of the Association.

Many Associations attempt to limit who may speak at an Annual Meeting. A good policy is to let all members who wish to speak have the opportunity to speak but limit how long they may speak. Shaw & Lines usually suggests no more than five (5) minutes per person, but this timeframe may be less depending on the number of members who desire to speak. We further suggest that, where a meeting becomes very adversarial, the Association strictly comply with all time limits, even bringing a stopwatch or other timer if necessary.

[42] *See,* A.R.S § 33-1812(A) (Planned Communities) and § 33-1250(C) (Condominiums) which require that election materials, including electronic ballots and non-ballot-related material, are retained and made available to owners for at least one year.

4. Special Meetings of the Members

Special Meetings of the members are another form of member meeting. Special Meetings of the members are unique because they vary depending on the purpose of the Meeting of the members.

i. Who May Call A Special Meeting of the Members

The question of who may call a Special Meeting of the members is usually answered in the governing documents of the Association. If the Association's governing documents are silent, applicable Arizona statutes require that Special Meetings of the members may be called by the president, by a majority of the Board, or by owners having at least twenty-five percent (25%), or any lower percentage specified in the Bylaws, of the votes in the Association.[43]

ii. Common Purposes for Special Meetings of the Members

Special Meetings of the members may be called for a number of reasons, such as:

1. To authorize a Special Assessment or an increase to Annual Assessments.
2. To authorize an amendment of the Association's governing documents.
3. To remove members of the Association's Board of Directors.
4. To vote on other issues pursuant to the Association's governing documents.

iii. Special Meeting of the Members to Authorize a Special Assessment or Increase in the Annual Assessments

Generally, the Association's Declaration will dictate how Special Meetings of the members may be called to vote on a special assessment or increase in the annual assessment of the Association. Voting and quorum requirements concerning this type of Special Meeting of the members will also generally be found in the Association's Declaration. Additionally, any Special Meetings of the members must be conducted using absentee ballots pursuant to A.R.S. § 33-1812 (Planned Communities) and A.R.S. § 33-1250 (Condominiums).

iv. Special Meeting of the Members to Amend the Association's Governing Documents

Pursuant to most Association governing documents, Special Meetings of the members may be called to vote amending certain provisions of the Association's governing documents. Voting and quorum requirements concerning this type of Special Meetings of the members should also be generally found in the specific Association governing document that is being amended. Additionally, any Special Meetings of the members must be conducted using

[43] *See,* A.R.S. § 33-1804(B) (Planned Communities) and A.R.S. § 33-1248(B) (Condominiums).

absentee ballots pursuant to A.R.S. § 33-1250(C) (Condominiums) and A.R.S. § 33-1812(A) (Planned Communities).

v. Special Meeting of the Members to Remove Members of the Association's Board of Directors

Recent changes in Arizona law have changed the way members of an Association's Board of Directors may be removed. A.R.S. § 33-1813 (Planned Communities) and A.R.S. § 33-1243 (Condominiums) now trump any language in the Association's governing documents regarding Board member removal, and the statutes provide procedures concerning a Special Meeting of the members to remove members of the Association's Board of Directors.

It is important that an Association follow the quorum requirements of A.R.S. § 33-1813(A)(4)(e) (Planned Communities) and A.R.S. § 33-1243(H)(4)(e) (Condominiums). It is equally important that the Association carefully study A.R.S. § 33-1243 and § 33-1813 in order to abide by its provisions. If one or less than a majority of the Board is removed, the member(s) vacant seat shall be filled as provided in the Association's documents. This means that prior to the removal meeting being effectuated, the Association must review the Association's documents to determine how the Board seat(s) will be filled if the recall is successful and inform the owners of how the seat(s) will be filled.

If the community documents do not discuss how to replace a removed director, the procedures discussed below will apply.

If a majority of the Board members or all of the Board of Directors are removed, then the Association must elect their replacements and a duly called special meeting of the members. The special meeting of the members must be held no later than thirty (30) days from the date of the recall meeting.

The Board of directors shall retain all documents and other records relating to the removal and replacement of the member(s) of the Board of directors for at least one year and shall permit members to inspect those documents and records.

Finally, a member of the Board of Directors who is removed is not eligible to serve on the Board again until after her original term has expired unless the governing documents require a longer period of time.

V. PRIMARY FUNCTIONS OF A HOMEOWNERS ASSOCIATION

One of the primary duties of a homeowner's Association is to enforce the restrictions in the Association's governing documents.[44] In some circumstances, Associations may have

[44] See, *Tierra Ranchos Homeowners Ass'n v. Kitchukov,* 216 Ariz. 195, 201, 165 P.3d 173, 179 (App. 2007), which states that among other duties, the Association has a duty to act reasonably in exercise of its discretionary powers including rulemaking, enforcement, and design-control powers. See also, *College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010).

an obligation to enforce the restrictions found in the Association's governing documents.[45] It is important to understand how and when to properly enforce an Association's governing documents.

A. Protect and Maintain the Common Property

Both Arizona statutory law[46] and case law[47] assert that Associations have a duty to protect and properly maintain the common area property to which the Association, either through ownership or exclusive control, has the power to solely maintain or otherwise control. The duty to maintain the safety of common area property applies not only to physical conditions on the land but also to dangerous activities on the land.[48]

B. Enforcement of Restrictive Covenants

Restrictive covenants may be enforced in three (3) basic ways:

1. Imposing fines;
2. Filing a lawsuit seeking injunctive relief; and
3. Exercising "Self-Help."

In selecting any one of these options, an Association should rely on all three (3) main questions guiding the enforcement:

1. What enforcement action is allowed by the Association's governing documents?
2. Which contemplated method of enforcement action is likely to gain compliance?
3. Which method of enforcement action is reasonable under the circumstances?

These principles will help an Association safely navigate the complexity involved with enforcement of the Declaration. The above principles, along with the enforcement actions, are discussed in greater detail below.

In addition and prior to engaging in certain enforcement mechanisms, an Association must follow provisions of Arizona statutory law.

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[45] See, *Gfeller v. Scottsdale North Townhomes Ass'n,* 193 Ariz. 52, 969 P.2d 658 (App. 1998); *Johnson v. Pointe Cmty. Ass'n, Inc*., 205 Ariz. 485, 489, 73 P.3d 616, 620 (App. 2003).

[46] See, A.R.S. § 33-1247(A) (Condominiums) and A.R.S. § 33-1802(1) (Planned Communities).

[47] See, *Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.*, 189 Ariz. 206, 941 P. 2d 218 (1997).

[48] See, *Martinez v. Woodmar IV Condominiums Homeowners Ass'n, Inc.,* supra.

A.R.S. § 33-1242(D) (Condominiums) and A.R.S. § 33-1803(E) (Planned Communities) state that before an Association may take enforcement action other than sending an enforcement letter or "courtesy notice" (*i.e.,* impose a fine or file an injunction lawsuit), the Association must inform any owner that he/she may provide the Association with a written response concerning the violation by sending a certified letter to the address referenced in the violation letter **within 21-calendar days after the date of the initial violation letter**.

A.R.S. § 33-1242(D) and A.R.S. § 33-1803(E) require the Association to provide written notice to an owner of their option to petition for an administrative hearing on any enforcement action. Thus, in an enforcement action, an Association is required to notify an owner of the option to petition the Arizona Department of Real Estate for a hearing on the matter.

1. Waiver of Enforcement

Many Associations struggle with the concept of waiver of enforcement. This concept addresses whether an Association may require remediation of long-standing violations of the restrictions.

The above waiver of enforcement concept has been addressed further by Arizona Courts. In *College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n*, 225 Ariz. 533, 241 P.3d 897 (App. 2010), the Court articulated that:

> [W]hen Declaration contain a non-waiver provision, a restriction remains enforceable, despite prior violations, so long as the violations did not constitute a "complete abandonment" of the Declaration. *Id.* at 399, ¶ 26, 87 P.3d at 87. Complete abandonment of deed restrictions occurs when "the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed[.]" *Id.* (quoting *Condos v. Home Dev. Co*., 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954)).

The Court in *College Book* ultimately held that, so long as an Association has a non-waiver provision in its Declaration, the Association may enforce its restrictions against owners who are in long standing violation of the restrictions, so long as the Association has not abandoned the Declaration.

In fact, the *College Book* case further suggests that the Association has a duty to enforce the long standing violation. The Court specifically declared that (225 Ariz. at 541, 241 P.3d at 905):

> Similarly, we agree that applying a plainly worded non-waiver clause will not encourage discriminatory conduct by homeowners' Associations because they are constrained by principles of fairness and reasonableness. In *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, we adopted the Restatement

(Third) of Property: Servitudes § 6.13, which includes the duty of an Association to "treat members fairly" and to "act reasonably in the exercise of its discretionary powers including rulemaking, enforcement, and design-control powers." 216 Ariz. 195, 201, ¶ 25, 165 P.3d 173, 179 (App. 2007).

Additionally, the failure of an Association to take appropriate action to enforce restrictive covenants may subject it to liability. *See, e.g., Johnson v. Pointe Cmty. Ass'n, Inc*., 205 Ariz. 485, 489, ¶ 22, 73 P.3d 616, 620 (App. 2003) (holding that an Association's interpretation of its own restrictive covenants in a dispute with a homeowner is not entitled to judicial deference; reversing trial court's dismissal of claim for breach of fiduciary duty). In our view, these considerations will discourage an HOA from engaging in selective enforcement of restrictive covenants.

2. Mechanisms of Enforcement

i. Gaining Compliance by Imposing Fines

Imposing a fine for the violation of restrictive covenants is the most common means of gaining compliance in Associations. Under A.R.S. § 33-1803(B) (Planned Communities) and A.R.S. § 33-1242(A)(11) (Condominiums), an Association may fine an owner who is in violation of the restrictions, so long as the following criteria are met:

- ✓ the fine is "**reasonable**"; and
- ✓ the fine is only imposed <u>after the following</u>:
  - i. notice; and
  - ii. an opportunity to be heard.

A recent ruling in Arizona may have implications with regard to the ability of an association to validly assess and collect monetary penalties and/or fines from owners.

In *Turtle Rock III Homeowners Ass'n v. Fisher,* 243 Ariz. 294, 406 P.3d 824 (App. 2017), the Arizona Court of Appeals held that an Association must create and promulgate a separate schedule of fines to all owners prior to imposing such fines. The failure to have a schedule of fines is fatal – meaning – the absence of a schedule of fines is *per se* unreasonable under A.R.S. § 33-1803(B) and A.R.S. § 33-1242(A)(11), making any fines unenforceable. The Court of Appeals further held that "[a]d hoc fines" – fines that are imposed seemingly out of thin air – "are *per se* unreasonable". *Turtle Rock III,* 243 Ariz. at 294, ¶ 14, 406 P.3d at 824 (citing *Villas at Hidden Lakes Condos Assoc. v. Geupel Constr. Co*., 174 Ariz. 72, 81, 847 P.2d 117, 126 (App. 1992)).

Turtle Rock III also suggests that any such fines, in addition to being set forth in a published schedule of fines, must relate to some damage that the Association might suffer. "Without competent evidence of a fee schedule timely promulgated demonstrating the fine amounts and the appropriateness of such amounts, monetary penalties are *per se*

unreasonable." *Turtle Rock III,* at ¶ 17. The Association also has the burden of proving its damages in order to obtain a judgment for fines. "Even if a fine schedule existed, the HOA [still] had the burden to prove its burden"… that the fines were reasonable. *Turtle Rock III,* at ¶ 18.

The Arizona Supreme Court de-published *Turtle Rock III* in July of 2018; meaning that Arizona Courts are not required to abide by the decision and the decision is no longer precedence. This does not mean, however, that the arguments contained in *Turtle Rock III* could not be asserted in other cases and actions.

Therefore, it is still advisable that Associations attempt to abide by *Turtle Rock III*, as doing so is the legally conservative route. Abiding by *Turtle Rock III* will ensure that the Association is not susceptible to legal liability in the future.

Above all, the *Turtle Rock III* ruling reinforces the suggestion that an Association have:

i. a comprehensive enforcement policy that encompasses all of the various statutory and case law requirements regarding the enforcement of restrictive covenants;

ii. a subset of the comprehensive enforcement policy which contains a clearly articulated schedule of fines or fine policy that lists all potential violations and the corresponding fine attached to said violation; and

iii. proof that the comprehensive enforcement policy and articulated schedule of fines or fine policy has disseminated to all owners.

ii. Violation Enforcement through Filing a Lawsuit Seeking Injunctive Relief

Restrictions found in Association governing documents may also be enforced through the seeking of injunctive relief. Injunctive relief is the process in which an Association petitions the Superior Court to issue an order requiring an owner who is in violation of the restrictions to comply with the restrictions. Because injunctive relief requires litigation, seeking injunctive relief is usually implemented in emergency situations or as a last resort.

When an actor becomes an owner of property located within a homeowner's Association, it agrees to the restrictions in the Declaration and it is "bound to (its) performance as effectively as if (it) had executed an instrument containing them." *Heritage Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977). Furthermore, "enforcement of such restrictions is by means of an injunction." *Id.*

To assert a claim for injunctive relief, the Association must show that "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the Association and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. Mercexchange, L.L.C.*, 547 U.S. 388, 391 (2006).

iii. Exercising Self-Help

Self-help is a mechanism by which the Association seeks to address a continuing violation of the restrictions by remedying the violation itself. The most common example of self-help is when an Association pays a landscaper to maintain the yard of an owner who has not been maintaining the yard in violation of the restrictions. Self-help is usually available under an Association's Declaration and the costs of self-help may usually be recouped by the Association. Before exercising self-help, an Association should carefully review its Declaration to make sure it is allowed to do so.

C. Collecting Assessments an Other Monies Owed

The most important function of an Association is the collection of assessments and other monies owed to the Association. Assessments are the financial lifeblood of the Association and without assessments, an Association would be unable to function. An Association's rights and abilities to collect assessments and other monies owed are provided in both the Association's Declaration and Arizona Statutes.

1. The Statutory Lien

By operation of law, Associations have an automatic lien on all property within the Association. Under Arizona Law,[49] the "Common Expense Lien;" includes assessments (as defined under Arizona Law[50]), charges for late payment of the assessments if authorized in the declaration, reasonable collection fees and costs incurred or applied by the association and reasonable attorney fees and costs that are incurred with respect to those assessments, if the attorney fees and costs are awarded by a court.

The Common Expense Lien does not include "Member Expenses" and "Unit Owner Expenses" which includes fees, charges, late charges, monetary penalties, or interest[51] or attorney's fees incurred in enforcing the restrictions.

The Common Expense Lien arises when "the assessment becomes due."[52] This does not necessarily coincide with when the delinquency arises. If you have an annual assessment "payable in installments, the full amount of the assessment is a lien from the time the first assessment installment becomes due."[53]

[49] *See,* A.R.S. § 33-1202(4) (Condominiums).
[50] *See,* A.R.S. § 33-1802(2) (Planned Communities) and A.R.S. § 33-1202(10) (Condominiums).
[51] *See,* A.R.S. § 33-1802(5) (Planned Communities) and A.R.S. § 33-1202(26) (Condominiums).
[52] *See,* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).
[53] *See,* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

2. Lien Priority

In Arizona, a Common Expense Lien is second in priority to the following liens:[54]

a. Liens and encumbrances recorded prior to the recordation date of the Declaration;

b. Recorded first mortgages or contracts for sale;

c. Liens for real estate taxes and other governmental assessments directly related to the property; and

d. Property taxes.

Mechanics' and materialmens' liens and certain other assessment liens are exceptions from this priority scheme.[55]

3. Collection of Association Assessments - Enforcement of Association Liens

When an owner in an Association fails to pay the Common Expense Lien, the Association has several means to effectuate collection of the Common Expense Lien. Some collections options are based on the fact, as discussed above, that the Association has a lien regarding the assessments.

i. Initial Collection Demand Letter

The Association, or the Association's managing agent, may send owners an initial collection demand letter when owners are delinquent. Most Associations send an initial collection demand letter when owners are more than thirty (30) days delinquent.

Please note that a collection demand letter is subject to the provisions of the Federal Fair Debt Collections Practices Act ("FDCPA") and Associations (or its agent) should familiarize itself with the requirements of the FDCPA.

In addition to sending an initial collection demand letter, an Association may also impose a late fee for late payment of assessments, so long as the Association's Declaration expressly provides for the charging of a late fee, pursuant to A.R.S. § 33-1803(2) (Planned Communities) and A.R.S. § 33-1202(10) (Condominiums).

[54] *See,* A.R.S. § 33-1256(B) (Condominiums) and A.R.S. § 33-1807(B) (Planned Communities).
[55] *See,* A.R.S. § 33-1256(C) (Condominiums) and A.R.S. § 33-1807(C) (Planned Communities).

ii. Subsequent Collection Demand Letters

Prior to sending an owner to a collection agency or attorney to collect delinquent amounts owed, the Association shall provide the following written notice to the member at the member's address as provided to the Association:[56]

> **YOUR ACCOUNT IS DELINQUENT. IF YOU DO NOT BRING YOUR ACCOUNT CURRENT OR MAKE ARRANGEMENTS THAT ARE APPROVED BY THE ASSOCIATION TO BRING YOUR ACCOUNT CURRENT WITHIN THIRTY DAYS AFTER THE DATE OF THIS NOTICE, YOUR ACCOUNT WILL BE TURNED OVER FOR FURTHER COLLECTION PROCEEDINGS. SUCH COLLECTION PROCEEDINGS COULD INCLUDE BRINGING A FORECLOSURE ACTION AGAINST YOUR PROPERTY.**

The above written notice must:

i. be sent at least **thirty days (30) before authorizing an attorney or a collection agency** to begin collection activity on behalf of the Association;

ii. be sent by certified mail, return receipt requested, and may be included within other correspondence sent to the member regarding the member's delinquent account;

iii. be written in boldfaced type or all capital letters; and

iv. include the contact information for the person that the member may contact to discuss payment.

4. Personal Money Judgments Lawsuits

If collection letters do not resolve the dispute, the Association may seek to collect the debt through court action. Under general Declaration provisions, an owner is personally liable for amounts owed to the Association and the Association may file a lawsuit against the owner to collect the delinquency. For collection of relatively small delinquencies (less than $10,000), many Associations choose to file personal judgment lawsuits in Justice Court. Justice Court can provide a less expensive and more efficient means of obtaining a personal money judgment against an owner, as opposed to the more costly route of filing in Superior Court.

Once a judgment is obtained, an Association may pursue wage garnishments and bank garnishments to collect on the judgment.

[56] *See,* A.R.S. § 33-1256(K) (Condominiums) and A.R.S. § 33-1807(K) (Planned Communities).

5. Foreclosure Lawsuits

The Common Expense Lien may only be foreclosed if the owner has been delinquent in the payment of the Common Expense Lien for a period of one year or in the amount of one thousand two hundred dollars [$1,200] or more, whichever occurs first.[57]

Additionally, prior to initiating a foreclosure action, the Association's board of directors must show that it exercised reasonable efforts to communicate with the delinquent owner and offered the delinquent owner a reasonable payment plan.[58]

Once a judgment is obtained, the county Sheriff's office may be instructed to sell the property to satisfy the judgment to recover the delinquency. A "writ of special execution" is issued by the Court instructing the Sheriff to conduct the sale. After posting and publishing notice of the sale, the property is auctioned off to the highest bidder at the Sheriff's offices, or any other place designated in the notice. If no one bids on the property, the Association will take title to the property for the amount of its bid. The Association may then dispose of the property as it sees fit.

If a purchaser outbids the Association at the auction, the purchaser must deliver cash or a cashier's check to the Sheriff's office within five (5) days from the sale. Upon receipt of the sale price, the Sheriff will issue payment to the Association in the amount of its judgment, interest and costs incurred in connection with the sale. The Association is also responsible for payment of a commission to the Sheriff for successfully selling the property and satisfying the delinquency.

After the sale, the owner's interest is foreclosed, but he/she still has time to redeem the property. The owner has a statutory redemption period (generally, 6-months unless the property is abandoned, then 30-days) in which the owner can redeem the property and regain full title to the property by paying the total amount of the sale price, plus interest and a penalty.

Following the owner's redemption period, junior lien holders in their order of priority may also redeem the property and secure title by payment of the full redemption amount. The redemption payoff is generally provided by and handled through the Sheriff's office that conducted the sale. If the property is redeemed within the redemption period, the owner takes back all rights and interest in the property as if the foreclosure and sale never occurred; however, the Association is paid in full.

If the owner or any junior lien holder fails to redeem the property within the redemption period, the purchaser (including the Association if it was the successful bidder at the sale) may then request and the Sheriff must issue a "Sheriff's Deed" to the purchaser, subject to any liens that were not foreclosed through the foreclosure process or liens that may have attached during the redemption period. With a recorded Sheriff's Deed in hand, the purchaser is generally considered to hold good and marketable legal title as owner of the property.

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[57] *See,* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).
[58] *See,* A.R.S. § 33-1807(A) (Planned Communities) and A.R.S. § 33-1256(A) (Condominiums).

6. Unforeseen Collections Issues

i. First Mortgage Holder Foreclosure

The first question that comes to mind concerning first mortgage holder foreclosures is "when does an Association know a house is being foreclosed by a first mortgage holder?" Pursuant to law, first mortgage holders, prior to conducting a trustee sale (which is where the property will be foreclosed and sold to remedy the delinquent mortgage), must send the Association a "Notice of Trustee Sale." The Notice of Trustee Sale must also be recorded in the county where the property is located. The Notice of Trustee Sale must be sent to anyone who has a recorded interest or lien (such as an Association) in the property.

Once the Association has received the Notice of Trustee Sale, the Association should determine whether the owner is delinquent in their assessments. If the owner is delinquent in their assessments, the Association may make a claim to the trustee for any excess proceeds if the property is sold at a trustee sale. Excess proceeds are monies obtained by selling a property at a trustee sale that are over and above the amount owed to the first mortgage holder. Since, in most cases, an Association's lien for delinquent assessments is second in priority to that of the first mortgage holder, any excess proceeds should go to the Association to satisfy any delinquent assessments and other statutorily collectible amounts owed.

In order to secure excess proceeds, the Association must make a written claim to the trustee (the person who will be holding the money once the trustee sale takes place) pursuant to A.R.S. § 33-812, requesting that the trustee release any excess proceeds gained to satisfy the owner's delinquency with the Association. The letter should include:

1. The amount of the delinquency and proof of the delinquency (a customer ledger will usually suffice as proof of the delinquency);
2. A statement as to the Association's lien priority; and
3. A statement showing the Association is entitled to excess proceeds (reference to the appropriate statute or Declaration provision regarding the Association's assessment lien should suffice).

If the trustee, after receipt of the above notice letter, fails to deliver any excess proceeds to the Association, the Association's right to collect attorney's fees should it have to institute legal action to collect the excess proceeds will be saved. It is because of this that the above notice letter is so important and should be sent upon receiving a Notice of Trustee Sale.

In the event that there are no excess proceeds after the trustee sale and the property has reverted to a third party, then the Association's lien will be extinguished. Consequently, the Association would not be entitled to collect any assessments or attorney fees incurred prior to the date of the trustee sale from the new owner. Nonetheless, the Association may still pursue a money judgment in the hope that the homeowner will obtain future assets that the Association could garnish in order to recover what it is owed.

ii. Bankruptcy

Another unexpected collection issue occurs when an owner declares bankruptcy and ceases paying their assessments. Upon the receipt of a Notice of Petition for Bankruptcy (typically a Chapter 7 filing or a Chapter 13 filing), an Association should prepare a statement of the declaring owner's account. Once the statement has been prepared, it should be sent to the Association's attorney.

At this point, the Association's attorney will intervene on behalf of the Association by filing a Notice of Appearance with the Bankruptcy Court informing the Court that the attorney is representing the Association. The attorney may also file a Proof of Claim with the Bankruptcy Court that substantiates the debt owed by the owner to the Association.

If the owner files a Chapter 7 bankruptcy and decides to keep their home, the Association may petition to lift the bankruptcy-initiated "stay" of collections enforcement and foreclose on the property should the owner not pay the delinquent assessments.

If the owner files a Chapter 13 bankruptcy, the Association may petition the Court to include the Association's delinquency in the payment plan created by the Bankruptcy Court.

Bankruptcy is a complicated matter. Because of this, it is important that the Association rely on the advice of its attorney to aid in navigating the process.