

April 27, 2026

VIA EMAIL AND CERTIFIED MAIL

Board of Directors

Santa Rita Ranch III Homeowners Association

c/o AAM, LLC

1600 W. Broadway Rd., Ste. 200

Tempe, Arizona 85282

FORMAL NOTICE TO THE BOARD OF DIRECTORS

Re: Formal Notice of Material Legal Defects in Resolution No. 2018-001 - Assessment

Collection Policies & Procedures

Dear Board Members:

I am providing formal notice that Santa Rita Ranch III Homeowners Association's Resolution No. 2018-001 Regarding Assessment Collection Policies & Procedures contains material legal defects and should not be enforced as written without immediate review, suspension of defective provisions, and revision.

The policy appears to have been adopted in 2018 and sets out quarterly assessment due dates, a 15-day delinquency date, late charges, demand-letter fees, lien-recording charges, attorney referral, foreclosure language, attorney-fee recovery, lien-release charges, returned-check charges, and hardship-waiver provisions.

This notice is not a refusal to pay valid assessments. Valid assessments must be paid. The issue is whether the Association may continue using an outdated collection policy that conflicts with current Arizona planned-community statutes, particularly A.R.S. §§ 33-1802, 33-1803, and 33-1807.

1. The Policy's Foreclosure Language Is Materially Outdated and Overbroad

Resolution No. 2018-001 states that unresolved delinquencies may be referred to legal counsel after 120 days and that the Board may pursue remedies including foreclosure. That language is defective if used as a foreclosure trigger.

Current A.R.S. § 33-1807(A) provides that an association's common expense lien may be foreclosed only if the owner "has been and remains delinquent" in assessment payments for 18 months or in the amount of \$10,000 or more, whichever occurs first, measured as of the filing date.

The Board must also exercise reasonable efforts to communicate with the member and offer a reasonable payment plan before filing a foreclosure action.

Accordingly, any policy language implying that foreclosure may proceed based merely on a 60-day lien notice, 120-day referral, or expiration of a 15-day demand letter is contrary to current Arizona law and should be rescinded or superseded.

2. The Policy Does Not Contain the Mandatory 30-Day Statutory Notice Required Before Outside Collection Activity

The policy's "Court Action Demand Letter" provision gives only 15 days before legal action may be filed. That is not sufficient for outside attorney or non-agent collection activity.

A.R.S. § 33-1807(L) requires the Association to send a specific written notice at least 30 days before authorizing an attorney, or a collection agency that is not acting as the Association's managing agent, to begin collection activity.

The notice must be in bold-faced type or all capital letters, must include contact information for discussing payment, and must be sent by certified mail, return receipt requested.

The existing 2018 policy should be amended to incorporate the exact statutory notice requirement.

3. The Policy Improperly Risks Treating “All Amounts” as Foreclosable Lien Amounts

The policy repeatedly refers to “all outstanding amounts,” “all amounts claimed under the Notice of Lien,” attorney fees, costs, interest, late charges, and other charges. That is legally overbroad.

A.R.S. § 33-1802 defines a “common expense lien” as the lien for assessments, assessment late-payment charges if authorized in the declaration, reasonable collection fees and costs, and attorney fees and costs incurred with respect to assessments if awarded by a court.

The same statute separately defines “member expenses” as fees, charges, late charges, monetary penalties, or interest that are not included in the common expense lien.

A.R.S. § 33-1807(B) states that, notwithstanding any contrary community-document provision, member expenses are not enforceable as common expense liens.

The Association may obtain a judgment lien for member expenses only after a civil judgment and recording, and that judgment lien may not be foreclosed and is effective only on conveyance.

The collection policy must clearly distinguish assessment debt from fines, violation charges, miscellaneous member expenses, interest on non-assessment amounts, and non-court-awarded attorney fees.

4. The Policy Does Not Track Arizona’s Mandatory Payment-Application Order

A.R.S. § 33-1807(K) controls payment application notwithstanding contrary language in community documents, management contracts, attorney contracts, or agent agreements.

Unless the member directs otherwise, payments must be applied in the following order:

1. Unpaid assessments;
2. Due-but-not-delinquent assessments;

3. Authorized late charges for those assessments;
4. Reasonable collection fees and costs;
5. Court-awarded attorney fees and costs incurred with respect to those assessments; and
6. Only then to other fees, charges, penalties, interest, or late charges.

The 2018 policy does not contain this statutory order. It should be amended immediately.

The Association should also audit any accounts where payments may have been applied first to management fees, collection fees, attorney fees, interest, fines, or penalties before assessment principal.

5. The Management-Contract Fee Escalator Is Legally Defective Unless Limited by Statute and Reasonableness

Several provisions impose fixed collection charges but also state that the amounts may change “from time to time” in the management contract. That is not a safe or lawful drafting method.

A management contract cannot override A.R.S. §§ 33-1803 or 33-1807.

A.R.S. § 33-1803(A) permits reasonable late charges for assessment nonpayment but caps late charges at the greater of \$15 or 10% of the unpaid assessment, and the charge may be imposed only after notice that the assessment is overdue or will be considered overdue after a certain date.

The policy should state that all management-company, demand-letter, lien, collection, convenience, and administrative fees must be reasonable, actually incurred or applied, supported by Association records, and limited by Arizona law.

6. Attorney-Fee Language Is Overbroad

The policy states that the Association is entitled to recover reasonable attorney fees and collection costs incurred in collecting assessments or other charges. That is only partially correct.

A.R.S. § 33-1807(I) allows a judgment or decree in an action under § 33-1807 to include costs and reasonable attorney fees for the prevailing party.

But A.R.S. § 33-1802 includes attorney fees and costs in the common expense lien only if those fees and costs are awarded by a court.

The Association should not represent pre-judgment attorney fees as foreclosable common expense lien amounts unless and until they are awarded by a court.

7. Any Recorded Lien Notice Must Avoid Misleading Lien-Priority Statements

A.R.S. § 33-1807(F) states that recording the declaration constitutes record notice and perfection of the common expense lien and that further recording of any claim of common expense lien is not required.

A separate Notice of Lien may be used as a collection tool, but it must be accurate.

Arizona case law is clear that HOA assessment liens are subordinate to recorded first deeds of trust and other priority interests listed in § 33-1807.

In *Cypress on Sunland Homeowners Association v. Orlandini*, 227 Ariz. 288, 257 P.3d 1168 (App. 2011), the Arizona Court of Appeals rejected an HOA's strained interpretation of § 33-1807 and held that the Legislature intended a recorded first deed of trust to have priority over an earlier-perfected HOA assessment lien.

The court also addressed serious consequences from misleading lien-priority representations in HOA foreclosure pleadings.

The Association should ensure no lien notice, account statement, demand letter, or foreclosure pleading states or implies priority inconsistent with A.R.S. § 33-1807(C).

8. Arizona Appellate Authority Confirms That § 33-1807 Is the Controlling Foreclosure Statute

In *Windrose Estates Homeowners Association v. Wright*, the Arizona Court of Appeals addressed HOA foreclosure under A.R.S. § 33-1807 and emphasized that HOA foreclosure is governed by that statute's procedural framework.

That statutory framework includes collection notice, reasonable communication and payment-plan efforts before foreclosure, civil-service requirements, and execution-sale notice.

Although *Windrose* applied the prior statutory foreclosure threshold then in effect, the case reinforces the point that Arizona courts look to A.R.S. § 33-1807 as the controlling foreclosure statute.

The current version of § 33-1807(A) now uses the 18-month / \$10,000 threshold.

9. To the Extent the Policy Creates New Owner Obligations Not Grounded in the Declaration, It Is Vulnerable

Arizona restrictive covenants and HOA documents are interpreted under ordinary servitude and contract principles.

In *Powell v. Washburn*, 211 Ariz. 553, 125 P.3d 373 (2006), the Arizona Supreme Court adopted the Restatement approach and held that restrictive covenants should be interpreted to give effect to the parties' intent as determined from the document as a whole and the purpose for which the covenants were created.

In *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 506 P.3d 18 (2022), the Arizona Supreme Court held that an HOA may not rely on broad amendment authority to impose new

restrictions or affirmative obligations unless the original declaration provided sufficient notice that such obligations could later be adopted.

Therefore, any part of Resolution No. 2018-001 that imposes new substantive owner liability through a board resolution or management-contract fee schedule, rather than implementing existing assessment remedies authorized by the Declaration and Arizona law, is vulnerable.

10. Requested Corrective Action

Please treat this as a formal request that the Board:

1. Place “Review and Replacement of Resolution No. 2018-001” on the agenda for the next open Board meeting.
2. Suspend enforcement of any foreclosure-related language in the 2018 policy unless and until the Association has complied with current A.R.S. § 33-1807(A), (K), and (L).
3. Adopt a superseding collection policy that expressly incorporates current Arizona law, including the 18-month/\$10,000 foreclosure threshold, reasonable communication efforts, payment-plan requirement, statutory 30-day notice, payment-application order, and the distinction between common expense liens and member expenses.
4. Direct AAM and collection counsel to stop applying any management-contract or attorney-contract provision that conflicts with A.R.S. §§ 33-1803 or 33-1807.
5. Audit all delinquent ledgers to confirm that payments were applied in the statutory order required by A.R.S. § 33-1807(K).
6. Ensure that no recorded notice of lien, collection letter, statement of account, or pleading includes non-lienable member expenses as foreclosable common expense lien amounts.
7. Confirm in writing that no account will be referred to outside counsel or a non-agent collection agency without the statutory 30-day certified notice required by A.R.S. § 33-1807(L).

8. Confirm in writing that no foreclosure action will be authorized unless the owner has been and remains delinquent in assessment payments for 18 months or \$10,000 or more, and the Board has first exercised reasonable communication efforts and offered a reasonable payment plan.
9. Revise all collection letters and templates to comply with current statutory language and timelines.

11. Records Request

Pursuant to A.R.S. § 33-1805, please make the following Association records available for examination or copying within 10 business days:

1. The complete adopted version of Resolution No. 2018-001 and all later amendments, if any.
2. Minutes, agenda, notice, written consent, or other records showing the Board action adopting Resolution No. 2018-001.
3. The current AAM management contract and all exhibits or fee schedules referenced by the collection policy, including any "Exhibit A" that sets collection, demand-letter, lien, or administrative fees.
4. The current collection-attorney engagement agreement or fee schedule, redacted only as necessary for privileged legal advice.
5. Any current delinquency-letter templates, demand-lien-letter templates, lien forms, court-action demand templates, and A.R.S. § 33-1807(L) notice templates.
6. The Association's current payment-application policy or software settings used by AAM for owner ledgers.
7. Any Board-approved policy governing payment plans before foreclosure.
8. Any records showing Board review of the collection policy after the Arizona Legislature amended § 33-1807.

A.R.S. § 33-1805 requires financial and other records of the Association to be made reasonably available to members and gives the Association 10 business days to fulfill an examination request or provide requested copies, subject to statutory exceptions.

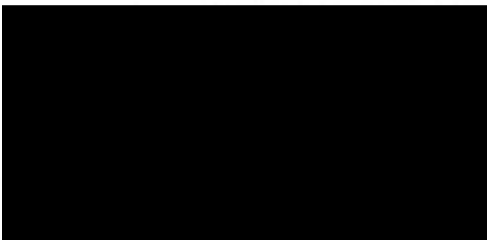
12. Reservation of Rights

This notice is provided to give the Association an opportunity to cure a defective and outdated policy before it causes avoidable disputes, improper charges, invalid lien claims, or unlawful foreclosure activity.

Nothing in this notice waives any rights, remedies, objections, defenses, statutory hearing rights, claims for improper collection practices, or challenges to any assessment, charge, lien, ledger entry, attorney fee, collection cost, notice, or foreclosure action.

Please preserve all records relating to the adoption, notice, implementation, and enforcement of the Assessment Collection Policies & Procedures, including agendas, minutes, resolutions, notices, correspondence, hearing records, ledgers, and management directives.

Please provide a written response identifying what corrective action the Board will take.



Santa Rita Ranch III Homeowner