

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 the January 1, 2024 - Fine Policy and
Appeal Process**

Dear Board Members:

I write to place the Board on formal notice that the Association's "Fine Policy and Appeal Process," made effective January 1, 2024, is materially inconsistent with Arizona law and is therefore unenforceable in material part as presently written and, to the extent applied in accordance with its current terms, procedurally and substantively vulnerable to challenge. This notice is directed specifically to the provisions governing the timing of monetary penalties, the content and operation of the appeal/response process, the treatment of fines and related charges as though they were assessments, and the procedure by which the policy was adopted.

Arizona law permits a planned community association to impose reasonable monetary penalties only after notice and an opportunity to be heard. A.R.S. § 33-1803(B). The statute further prescribes a mandatory owner-response and association-response process. A member who receives a notice of violation may provide a written response by certified mail within

twenty-one calendar days after the date of the notice. A.R.S. § 33-1803(C). Within ten business days after receipt of that response, the association must provide a written explanation that includes, unless already provided, at least: (1) the provision allegedly violated; (2) the date of the violation or observation; (3) the first and last name of the person or persons who observed the violation; and (4) the process the member must follow to contest the notice. A.R.S. § 33-1803(D). Unless the contest-process information required by subsection (D)(4) is provided in the violation notice, the association may not proceed with enforcement, including the collection of attorney fees, before or during the time prescribed by subsection (D), and it must notify the member of the option to petition for an administrative hearing before the Arizona Department of Real Estate pursuant to A.R.S. § 32-2199.01. A.R.S. § 33-1803(E).

The present policy conflicts with these statutory requirements in several concrete respects.

1. Improper Response Period

The policy authorizes a \$25.00 fine with the “Second Notice” fifteen days after the initial notice. That timetable is facially inconsistent with A.R.S. § 33-1803(B) and (C), because it purports to assess a monetary penalty before expiration of the owner’s twenty-one-day statutory response period and before completion of the hearing/contest process required by law.

At minimum, a fine assessed on day fifteen after the initial notice is legally vulnerable because it compresses or defeats the statutory process.

2. Appeal Process

The policy's "Appeal Process" does not track Arizona law. It limits appeals to "extenuating circumstances," provides that appeals not meeting the policy's internal requirements "shall not be heard" and are deemed denied, and states that all Board decisions are final and may not be further appealed.

Those restrictions do not appear in A.R.S. § 33-1803(C)–(E). The statute gives the owner a right to submit a written response within twenty-one days; requires the association to provide the specified written explanation; bars the association from proceeding with enforcement before or during the statutory exchange of information unless the notice already included the required contest-process information; and requires written notice of the option to petition the Arizona Department of Real Estate under A.R.S. § 32-2199.01.

Accordingly, the current appeal language is defective and should be revised to conform to the statute.

3. Member Expenses Are Not Common Expenses

Third, the policy repeatedly states that unpaid fines, legal costs, and similar charges may be collected "in the same manner as assessments." That proposition is contrary to current Arizona lien law.

Under A.R.S. § 33-1802(5), "member expenses" include fees, charges, late charges, monetary penalties, or interest.

Under A.R.S. § 33-1807(B), member expenses are not enforceable as common expense liens. Rather, the association obtains a lien for member expenses only after entry of a judgment

in a civil action and recording of that judgment, and the resulting judgment lien **may not be foreclosed** and is effective only on conveyance of an interest in the real property.

Consequently, unpaid fines cannot lawfully be treated as assessment debt for lien-enforcement purposes, and policy language saying otherwise is unenforceable to that extent.

4. Written Fine Schedule Does Not Cure Statutory Defects or Eliminate the Association's Burden of Proof

Fourth, although a written fine schedule is generally preferable to ad hoc penalties, the existence of a written schedule does not itself cure statutory defects or ensure enforceability.

In *Turtle Rock III Homeowners Ass'n v. Fisher*, 243 Ariz. 294, 406 P.3d 824, 829 ¶ 18 (App. 2017), the Arizona Court of Appeals held that, without competent evidence of a timely promulgated fee schedule demonstrating the fine amounts and the appropriateness of those amounts, monetary penalties are per se unreasonable. The court further stated that, even if a fee schedule existed, the association bore the burden to prove its damages. *Id.*

Thus, while the Santa Rita Ranch III policy is at least structured, the Association would still bear the burden of proving that the schedule was validly adopted, properly promulgated, consistently applied, and reasonable in amount.

A written schedule is only the starting point. It does not eliminate the Association's obligation to comply with Arizona statutes, prove proper adoption and notice, and establish that the amounts charged are reasonable, legally authorized, and supported by competent evidence. For monetary penalties, Turtle Rock further requires the Association to prove the basis for the amount imposed, including damages or another legally sufficient justification for the charge. A

schedule that is unsupported by records, inconsistently applied, punitive rather than compensatory, or used to impose amounts beyond what Arizona law permits remains vulnerable to challenge even if it appears formal on paper.

5. Failure to Distinguish Assessment Collection from Penalty Enforcement and Statutory Payment Application

A.R.S. § 33-1803(B) separately limits late charges on unpaid penalties to the greater of fifteen dollars or ten percent of the unpaid penalty, requires payments on unpaid penalties to be applied first to principal and then to accrued interest, and requires that notice pursuant to subsection (B) include information pertaining to the manner in which the penalty shall be enforced.

The current policy's generalized statement that nonpayment of a fine subjects the owner to the same penalties and enforcement as nonpayment of assessments does not accurately describe the statutory distinction between assessments and penalties and does not cure the deficiencies identified above.

6. Adoption by Written Consent Is Procedurally Vulnerable Under Arizona's Open-Meeting Requirements

The Board's adoption of the policy by unanimous written consent under A.R.S. § 10-3821 is, at minimum, procedurally vulnerable in light of A.R.S. § 33-1804.

Arizona's planned-community open-meeting statute requires open board meetings with notice and agenda and declares it to be the policy of the state that association board actions be conducted openly. A.R.S. § 33-1804.

Even if unanimous written consent is generally available under nonprofit corporation law, adoption of a standing enforcement policy of general application outside a noticed open meeting is subject to challenge and should be cured by reconsideration and re-adoption in open session.

7. Requested Corrective Action

For the foregoing reasons, this correspondence constitutes formal notice that the Association's January 1, 2024 Fine Policy and Appeal Process is materially deficient and unenforceable in part.

I respectfully demand that the Board:

1. Suspend further imposition and collection of fines under the present policy until a legally compliant policy is adopted;
2. Cease representing that fines, fine-related charges, or attorney-fee claims arising from fines may be collected in the same manner as assessments;
3. Revise the notice, response, hearing, and appeal provisions to conform to A.R.S. β 33-1803(B)-(E) and A.R.S. β 32-2199.01;
4. Place the matter on the agenda of the next properly noticed open Board meeting;
5. Formally re-adopt a corrected policy in open session; and
6. Review fines previously imposed under the current policy to determine whether they were assessed before expiration of the statutory response period or pursued under invalid collection language and vacate or refund any such amounts as appropriate.

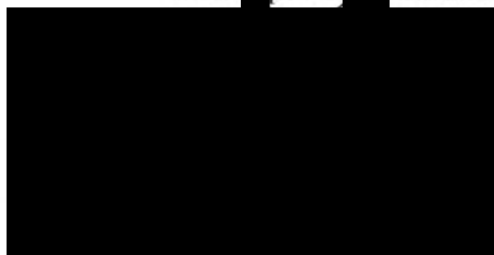
8. Reservation of Rights

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 right, claim, remedy, objection, defense, statutory hearing rights, claims for improper collection practices, or challenges to any assessment, charge, lien, ledger entry, attorney fee, collection cost, notice, foreclosure action, or remedy available under the Governing Documents or Arizona law, all of which are expressly reserved.

Please preserve all records relating to the adoption, notice, implementation, and enforcement of the Fine Policy and Appeal Process, 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