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May 15, 2026

VIA EMAIL

[REDACTED]

**Re: Santa Rita Ranch III Homeowners Association
Notices of Alleged Defects in Association Policies**

[REDACTED]

[REDACTED]

We are the attorneys for Santa Rita Ranch III Homeowners Association (“Association”). We have reviewed the letter and enclosures you provided to the Association, in which you claim the Association’s enforcement and collection policies are legally deficient and request the Association revisit the terms of these policies and suspend the enforcement of any terms of the policies that are not consistent with Arizona law. The Association has asked us to respond to your letter and the enclosures. We also respond to your requests to examine Association records contained in those papers, and records responsive to your valid requests that are in the Association’s possession are provided with this response.

I. Enforcement Policy

1. You first contend the Enforcement Policy is deficient because it allows the Association to issue a fine fifteen days after the date of an initial violation notice. You base this on the homeowners’ right to respond to the Association within twenty-one days of a notice of violation pursuant to A.R.S. § 33-1803(C). This right does not in and of itself impose a mandatory twenty-one-day waiting period before fines can issue. As your own letter noted, the statute only suspends the Association’s right to proceed with enforcement action if the notice does not recite “the process the member must follow to contest the notice.” *See* A.R.S. § 33-1804(D)(4), (E). Accordingly, if the Association’s notice states what that process is, then the Association may proceed with enforcement action after giving the owner an opportunity to be heard on any schedule authorized in its governing documents. The Association’s notices explain this process, and the CC&Rs and Bylaws do not impose any specific timing for the notice, appeal, and penalty procedures for violations. It is therefore lawful for the Association to structure its enforcement policy and follow it as currently constructed.

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2. You next assert the policy's appeal process is defective because it sets a standard that an owner must demonstrate extenuating circumstances to succeed on an appeal. Nothing in the law prohibits the Association from establishing such a standard for appeals. A.R.S. § 33-1803(C) does not create or define a right of appeal. It only creates a right for an owner to send a written response to the Association, which then triggers an obligation on the Association's part to provide certain enumerated information if it has not already done so. The statute only requires the Association to provide an owner an opportunity to be heard. An owner who chooses to submit an appeal that does not cite any justifications for reconsidering the fine has received an opportunity to be heard, even if the result is a denial as a matter of course. Lastly, the Association is only required to provide an owner notice of the administrative dispute process in A.R.S. § 33-2199.01 *et seq.* if its initial notice does not contain the process the member must follow to contest the notice. *See* A.R.S. § 33-1803(E). Because that process is included in the Association's notices, this requirement is not applicable.

3. Your letter next raises concerns about the policy's reference to collecting fines "in the same manner as assessments." The intention behind this language is to let homeowners know they will be billed and are responsible to pay fines like any other charges on their accounts. The Association does not pursue foreclosure for monetary penalties. However, to avoid the potential for any confusion about the scope Association's foreclosure rights, the Association is considering some revisions to this language.

4. You also assert the Association's fine policy is deficient pursuant to *Turtle Rock III Homeowners Assn. v. Fisher*, 243 Ariz. 294 (App. 2017). The Arizona Supreme Court de-published *Turtle Rock*, and it is no longer good law. *See Turtle Rock III Homeowners Assn. v. Fisher*, 2018 Ariz. LEXIS 193 (2018). The Association's fine schedule provides homeowners with sufficient notice of the consequences they will face if they violate the governing documents, and the amounts are in line with industry standards.

5. Next, you contend the Association improperly imposes the same late fees for fines as it does for assessments, citing to A.R.S. § 33-1803(B). However, the relevant language in that statute is the same as in A.R.S. § 33-1803(A), simply applied to fines rather than assessments. Accordingly, it is accurate to advise homeowners they will be subjected to the same kind of late fees for monetary penalties as they are for assessments.

6. Finally, you claim the policy is subject to challenge because it was adopted by unanimous written consent pursuant to A.R.S. § 10-3821, based on the open meeting requirements of A.R.S. § 33-1804. While this is theoretically true, Arizona law has not prohibited community association boards from acting by written consent outside of meetings. The state legislature appears to even recognize that these actions are currently valid because they proposed a bill to expressly outlaw action by written consent this year, which has not passed into law and is currently unlikely to do so. *See* HB2128 (2026). Regardless, the policy has been adopted and effective for more than two years. Anyone

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seeking to challenge the validity of the policy now would not have an adequate equitable justification for any such judicial action based on this technicality alone.

For these reasons, the Association will not proceed with any of the actions you have requested with respect to the policy, except to confirm in this letter that it complies with the laws governing its enforcement actions and will continue to do so. However, the Board is currently reviewing the enforcement policy with legal counsel and may adopt any changes to the policy that we may recommend.

II. Collection Policy

1. You first contend this policy is defective based on the assertion it implies the Association will proceed with foreclosure after an account is one hundred twenty days delinquent. However, the language of the policy merely notes that foreclosure is one of the available remedies for collection, which is true. It does not state or imply the Association will proceed with foreclosure after only one hundred twenty days. Nothing in the policy binds or directs the Association to proceed with foreclosure on such a timeline. The statute controls over the policy regardless, and the Association provides owners with the required notice and offer of a reasonable payment plan pursuant to A.R.S. § 33-1807(A) and (L) prior to pursuing foreclosure. The policy hypothetically could be more explicit in incorporating legal requirements like this, but there is no legal compulsion to do that. The Association follows what the law requires in collecting delinquent assessments, including when referring accounts to legal counsel and evaluating accounts for foreclosure eligibility.

2. Next, the Association is aware Paragraph 6 of the policy is out of date with recent changes to A.R.S. § 33-1807(L). However, the Association also recognizes the statute supersedes and controls over the policy. While the Board could revise the policy to incorporate the contemporary legal requirements, the mere presence of this language in the policy is not unlawful or actionable, so long as the Association continues to comply with the law, which it has done since the legislature implemented these changes in recent years.

3. You raise further concerns about whether the policy adequately distinguishes between member expenses and the common expense lien, as those terms are defined in the statute. However, nothing in the policy directs the Association to attempt to include any member expenses in the statutory common expense lien or represent them as such. The policy merely details the steps the Association will take when an owner does not pay all delinquent charges on an account. We note also that separate and apart from the statutory lien pursuant to A.R.S. § 33-1807, the CC&Rs establish their own contractual lien, which secures amounts that are excluded from the statutory and foreclosable common expense lien. *See* Art. 8, Section 8.4.

4. Your letter then questions the omission of the payment application schedule in A.R.S. § 33-1807(K). This schedule governs the Association regardless of what its

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policy says, and there is no legal compulsion to expressly incorporate the terms of governing law into the policy. The Association has properly applied payments it receives according to the statute and will continue to do so.

5. You also have concern about the amounts recovered from homeowners to cover the fees management charges for the services it provides to assist the Association with collections. You base this concern on the limitations on late penalties in A.R.S. § 33-1803(A). However, these charges are not late penalties, so that statute does not apply. They are instead collection costs and fees of the Association, which are part of the common expense lien pursuant to A.R.S. § 33-1802(2). The Association recognizes these fees and charges must be “reasonable.” It currently has no indication the charges are unreasonable. They are in line with industry standards.

6. You then contend the policy improperly represents pre-litigation attorneys’ fees as part of the common expense lien. However, that is not what Paragraph 10 of the policy says. It only advises owners the Association has the right to recover attorneys’ fees incurred in collecting delinquencies from an owner, which is true. This right is necessarily subject to any limitations imposed by law. The Association complies with the law.

7-9. The Association appreciates your concerns about representations of lien priority in its notices of claim of lien and confirms the form of those notices are accurate and fully compliant with the law. The Association also recognizes A.R.S. § 33-1807 as the statute governing its foreclosure rights, and it complies with the requirements of that statute. Finally, the Association is aware it cannot establish any new restrictions governing the homeowners’ use of their properties without an amendment to the CC&Rs. The collection policy does not create any such new restrictions.

For these reasons, the Association likewise does not intend to take any action in response to the enumerated requests in your letter, and it trusts the foregoing sufficiently confirms for you that the Board is committed to following the law at all times in the collection process. The Board has nonetheless also referred the collection policy to legal counsel for review and may adopt any changes to the policy that we recommend.

III. Records Request

The Association next responds to your request to examine Association records as follows:

1. The adopted version of Resolution No. 2018-001: See enclosed. There are no amendments.
2. Minutes, agenda, notice, written consent, or other records related to the adoption of Resolution No. 2018-001: The Association does not have records responsive to this request. The developer adopted this resolution for the Association during the period of declarant control. As such, the Association does not have any records related to

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the adoption of the policy beyond the signed resolution certifying it was duly approved at the time.

3. The current AAM management contract with exhibits and schedules: See enclosed. Any information pertaining to the compensation of management employees is withheld pursuant to A.R.S. § 33-1805(B)(5).
4. Attorney engagement letter for collection services: See enclosed.
5. Delinquency letter and similar templates: These templates are work-product of the Association's management company that it has not provided to the Association. Accordingly, the Association does not possess any records responsive to this request.
6. The Association's current payment application policy or software settings used by management: The Association does not have a formal policy governing the application of payments. It simply follows the law. Therefore, it has nor records in its possession responsive to this request. Additionally, the software settings are only information in management's possession. They are not records in the Association's possession. Accordingly, there is no obligation to respond to this part of the request.
7. Board-approved policy governing pre-foreclosure payment plans: The Board has not adopted any such formal policy. It simply follows the law. Therefore, the Association does not possess any records responsive to this request.
8. Any records showing Board review of the collection policy after amendments to A.R.S. § 33-1807: The Association is unable to respond to this request because the statute has been amended many times and is the subject of frequent legislative attention. The Association will review its files for responsive records if you provide more specific identification of the records you wish to examine.

IV. Conclusion

The Association appreciates your interest in its affairs and the time you have taken to present your concerns. We hope this letter assuages those concerns, and we direct you to stay apprised of any further actions the Board may take with respect to either policy after consulting with us. If you would like to respond to this letter, direct that response to our office only at the email or Tucson mailing address provided above.

SMITH & WAMSLEY, PLLC

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean K. Moynihan".

Sean K. Moynihan

Encl.: Copies of above-referenced records