

Response to Association counsel dated May 16, 2026

This retained response withdraws reliance on Turtle Rock and narrows several earlier legal positions. Read it together with the April 27 notices and counsel's May 15 response.

This is a separate text rendering of retained source SRC-000087, not a facsimile or proof of standalone May 16 delivery. The same substantive response appears on pages 65-76 of the exhibit volume retained as SRC-000073, transmitted with the August 16 submission. This does not establish that the exact DOCX bytes were sent.

The owner's name, home address and personal email are removed. Body paragraphs are retained in order; typography and list markers are normalized. The original file, metadata and any separate attachments are not embedded. Statements and legal interpretations are the writer's historical positions, not adjudicated findings or current legal advice.

Related records: SRC-000320, SRC-000321, SRC-000322 (April 27 notices); SRC-000042 (May 15 counsel response); SRC-000072 (August 16 transmittal).

[Owner's name, home address and personal email redacted]

May 16, 2026

VIA EMAIL

Sean K. Moynihan, Esq.
Smith & Wamsley, PLLC
2940 North Swan Road, Suite 212
Tucson, AZ 85712

Re: Santa Rita Ranch III Homeowners Association – Response to May 15, 2026 Letter

Mr. Moynihan,

Thank you for your May 15, 2026 letter and for the records provided with it. I appreciate that the Association took the concerns seriously enough to refer both policies to counsel for review.

At the outset, I want to correct one point directly. Your correction regarding Turtle Rock III Homeowners Ass'n v. Fisher is well taken. I did not catch the depublication issue before citing it, and I apologize for that oversight. I withdraw reliance on Turtle Rock.

That correction narrows one issue, but it does not resolve the broader concerns raised in my notices. Those concerns were never limited to whether every sentence in the policies creates an immediate independent cause of action. The more important question is whether homeowner-facing policies that govern fines, liens, attorney referral, and foreclosure should accurately and clearly describe the Association's authority under current Arizona law.

Respectfully, several portions of your response appear to defend language that is outdated, overbroad, or reasonably capable of misleading homeowners by arguing that the statute ultimately controls anyway. I do not disagree that the statute controls. That is precisely why the policies should be corrected. A homeowner should not be expected to read a published Association policy, identify which portions are obsolete or overstated, and then silently substitute the current Arizona statutes in their place. If the Association's actual practice is narrower and more lawful than the language of its policies, the policies should be conformed to the practice—not preserved through after-the-fact narrowing explanations.

I am not attempting to be adversarial. I am trying to focus the discussion on the practical governance issue: once ambiguity or outdated language has been identified, clarification is the sound course. Defending avoidable ambiguity is not.

I respond below to the principal points in your letter.

I. Enforcement Policy

Fifteen-Day Fine Timing and the Twenty-One-Day Statutory Response Period

I appreciate your clarification regarding A.R.S. § 33-1803(C)–(E). I agree that subsection (C), standing alone, does not expressly establish a categorical twenty-one-day prohibition on the imposition of any monetary penalty where the original notice already provides the contest process contemplated by subsection (D)(4). I also agree that subsection (E) expressly delays enforcement where the notice does not provide that contest process.

That said, the current Fine Policy still presents a real clarity problem.

The policy states that:

- the first notice requests compliance within fifteen days;
- if the violation remains after fifteen days, a second notice issues with a \$25 fine due immediately; and
- elsewhere, the policy informs owners that they may submit a written response by certified mail within twenty-one calendar days after the date of the notice.

Those provisions may be capable of reconciliation if the Association's actual violation notices and procedures clearly explain how the fifteen-day fine sequence interacts with the twenty-one-day statutory response process. But the policy itself does not explain that interaction. To an ordinary homeowner, the policy appears to allow a fine to be imposed before the owner's stated twenty-one-day certified-response period has expired.

The concern, therefore, is not that the statute unambiguously creates a waiting period in every circumstance. The concern is that the policy is unnecessarily confusing on a material procedural point. If the Association's position is that the fifteen-day fine sequence may proceed notwithstanding the twenty-one-day response opportunity, the policy should say so plainly and accurately. If the Association's practice is more protective than that, the policy should say that instead.

Because your defense of this issue depends substantially on what the Association's actual notices say, I renew my request for the current violation-notice and fine-notice templates, or representative redacted examples of those notices.

The "Appeal" Provision Risks Misstating the Owner's Ability to Contest a Violation

I also acknowledge your point that A.R.S. § 33-1803(C) does not itself create a formal appellate process or prescribe the standards for an internal "appeal." I do not contend that Arizona law expressly prohibits the Association from considering "extenuating circumstances" as part of an internal review process.

The problem is that the policy does not present that process as a discretionary leniency request. It presents it as a "RIGHT OF APPEAL." It then states that:

- appeals "shall demonstrate extenuating circumstances which require deviation from the Governing Documents";
- appeals must include supporting information for those extenuating circumstances; and
- any appeal that does not meet those requirements "shall not be heard by the Board and shall be considered DENIED."

If this is meant only as a hardship or leniency request, the policy should say that clearly. If it is meant to describe the process by which an owner may contest the underlying violation or penalty, then limiting that process to "extenuating circumstances" is misleading.

An owner may contest a violation for many reasons having nothing to do with hardship or deviation from the Governing Documents. For example, the owner may assert that:

- the violation did not occur;
- the violation was cured;
- the wrong property was cited;
- the cited rule does not apply;
- the notice contains factual errors;
- the Association lacks authority for the proposed sanction; or
- the proposed enforcement action is otherwise improper.

None of those is necessarily an "extenuating circumstance." They are basic factual and legal objections.

This is exactly the kind of point where the Association could easily clarify rather than defend ambiguity. A revised policy could distinguish between:

1. the statutory right to submit a written response and contest the notice;
2. any hearing or Board review process; and
3. any separate request for discretionary leniency based on extenuating circumstances.

That distinction would protect the Association as much as the homeowner by making the process administrable, transparent, and less prone to dispute.

The “Same Manner as Assessments” Language Should Be Corrected, Not Merely Explained Away

I appreciate your confirmation that the Association does not pursue foreclosure for monetary penalties. That clarification is important.

It also confirms why the Fine Policy should be revised.

The policy currently states:

“Failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under the Declaration.”

It also states that the costs of legal action related to continuing violations will be invoiced to the owner and “collected in the same manner as assessments.”

Under current Arizona law, assessments and monetary penalties are not interchangeable. A.R.S. § 33-1802 distinguishes between a “common expense lien” and “member expenses.” Monetary penalties fall within the statutory category of member expenses unless otherwise included in a common expense lien by statute. A.R.S. § 33-1807(B) then provides that member expenses are not enforceable as common expense liens, that any lien for member expenses exists only after civil judgment and recording, that such a lien may not be foreclosed, and that it is effective only on conveyance.

That statutory distinction matters. It affects liens, foreclosure, payment application, payoff demands, owner understanding, and the accuracy of notices. It is not a minor drafting preference.

Your letter explains that the Association intended the phrase “same manner as assessments” only to convey that fines are billed to an owner’s account and must be paid. I accept that as the Association’s stated intent. But that is not what the policy naturally says. The policy says “same potential penalties and enforcement,” which is materially broader.

Moreover, A.R.S. § 33-1803(B) requires notice concerning a penalty to include information pertaining to the manner in which the penalty shall be enforced. That makes accuracy in this area particularly important. A policy or notice that overstates the available enforcement mechanisms for fines is not a harmless imprecision.

I appreciate that your letter states the Association is considering revisions to avoid confusion. I respectfully submit that revisions are warranted, not optional. Where counsel’s explanation is narrower than the policy’s actual wording, the text should be corrected to match the explanation.

Late Charges on Unpaid Penalties

I also acknowledge your point that A.R.S. § 33-1803(B) permits a late charge on unpaid penalties subject to the statutory cap, and that the statutory cap mirrors the late-charge structure for assessments in subsection (A).

To the extent my prior submission implied that a similar late-charge structure for assessments and penalties is categorically improper, that point should be narrowed.

My concern is not that penalty late charges may never resemble assessment late charges. My concern is that the policy should not collapse penalty enforcement into assessment enforcement in a way that obscures the sharply different legal consequences of each. A concise clarification would resolve that issue.

Adoption by Written Consent

I have reviewed your response concerning adoption of the Fine Policy by unanimous written consent under A.R.S. § 10-3821. I do not contend here that the issue has been conclusively resolved by controlling Arizona appellate authority in the manner suggested in my original notice.

At the same time, A.R.S. § 33-1804 expresses a strong statutory policy that planned-community board business be conducted openly, that notice and agendas be provided in advance, and that the statute be construed in favor of open meetings.

Given that the Board is already reviewing the Fine Policy with counsel, I continue to believe the best course is for any revised policy to be placed on the agenda for a properly noticed open Board meeting and adopted in open session. That recommendation is not presented as an accusation that the prior written consent was necessarily void. It is a practical governance recommendation that would eliminate avoidable doubt and reinforce transparency.

II. Collection Policy

The Foreclosure Language Is Reasonably Capable of Misleading Homeowners

Your letter states that the Collection Policy does not expressly say the Association will foreclose after 120 days and that it merely identifies foreclosure as one available remedy. I understand that reading.

However, the concern remains when the Collection Policy is read as a whole.

The policy states that:

- after thirty days, a late letter may warn that failure to cure may result in acceleration and “the filing for and foreclosure of the lien”;
- after approximately sixty days, the Association may record a Notice of Lien;
- a subsequent “Court Action Demand Letter” may demand payment within fifteen days and warn that legal action may be filed; and
- after 120 days, unresolved delinquencies “will be directed to legal counsel,” after which the Board may pursue remedies including “foreclosure or receivership.”

I agree that the policy does not contain a single sentence saying, “foreclosure will be filed on day 120.” But that is not the concern. The concern is that the policy’s sequence reasonably suggests that foreclosure belongs to the same ordinary escalation track that begins within the first few months of delinquency.

Current A.R.S. § 33-1807(A) permits foreclosure of a common expense lien only if the owner has been and remains delinquent in assessments for eighteen months or in the amount of \$10,000 or more, whichever occurs first, as determined on the filing date. The statute also requires the Board to exercise reasonable efforts to communicate with the owner and offer a reasonable payment plan before filing foreclosure.

If the Association’s actual foreclosure practice complies with those statutory conditions, then revising the policy to say so should be straightforward. Leaving the present wording untouched creates unnecessary ambiguity for owners and unnecessary risk for the Association.

Paragraph 6 Is Concededly Out of Date and Should Be Revised Promptly

Your letter expressly acknowledges that Paragraph 6 of the Collection Policy is out of date with recent changes to A.R.S. § 33-1807(L).

That acknowledgment is significant.

Paragraph 6 describes a fifteen-day court-action demand after a lien notice. Current A.R.S. § 33-1807(L) requires a specific written notice at least thirty days before authorizing an attorney, or a collection agency that is not acting as the Association’s managing agent, to begin collection activity on an unpaid common expense lien account. The statute also prescribes the notice content, formatting, and certified-mail delivery requirements.

I appreciate the statement that the Association follows the current law in practice. But once the Association acknowledges that a published policy provision is out of date, the appropriate response should be to revise it. Characterizing the outdated language as not “actionable” so long as the statute controls misses the point. The issue is not only whether the Association could defend itself if challenged. The issue is whether the Association should knowingly leave obsolete legal instructions in a homeowner-facing policy.

It should not.

An outdated collection policy invites:

- confusion among homeowners;
- inconsistent implementation by future managers or vendors;
- avoidable disputes over which policy language controls;
- unnecessary concern that the Association’s procedures are not aligned with current law; and
- reputational damage that could be avoided through simple correction.

Paragraph 6 should be updated.

The Policy Should Distinguish Statutory Common Expense Liens, Member Expenses, and Any Claimed Contractual Lien Theory

Your letter argues that nothing in the Collection Policy directs the Association to include member expenses in a statutory common expense lien and also notes that the CC&Rs establish what you describe as a separate contractual lien under Article 8, Section 8.4.

I am not attempting in this response to adjudicate the scope or enforceability of any separate contractual lien theory under the Declaration. That issue may depend on the precise Declaration language and its interaction with current Arizona law.

My narrower point remains: the Collection Policy itself does not clearly distinguish among:

- amounts secured by the statutory common expense lien under A.R.S. § 33-1807;
- member expenses that are not enforceable as common expense liens under A.R.S. § 33-1807(B); and
- any separate contractual claim the Association believes it possesses under the Declaration.

Instead, the policy repeatedly refers to:

- “all outstanding amounts”;
- “all amounts claimed under the Notice of Lien”;
- “all other costs and Assessments”; and
- pursuit of multiple remedies to collect amounts owed.

If the Association intends to rely on different lien theories for different categories of debt, then clarity becomes more important, not less. A homeowner should not be left to infer whether a “Notice of Lien” references a statutory common expense lien, a claimed contractual lien, or some combination of the two. Nor should the policy blur together amounts that Arizona law treats differently.

This is not a request for unnecessary wordsmithing. It is a request that the Association’s written policy accurately tell owners what category of obligation is being discussed and what remedies legally attach to that category.

Payment Application Under A.R.S. § 33-1807(K)

I understand your position that A.R.S. § 33-1807(K) controls payment application regardless of whether the Collection Policy restates it. I do not contend that omission of the statutory order, standing alone, automatically invalidates the entire policy.

However, the mandatory payment-application order is central to the administration of delinquent accounts. It affects whether assessments remain unpaid, whether an account is described as

delinquent, whether charges escalate, and whether later collection communications are accurate.

The statute expressly states that, notwithstanding any contrary community document, management-company contract, attorney contract, or agent agreement, payments must be applied in the statutory order unless the member directs otherwise.

Because the Collection Policy is the Association's homeowner-facing document governing delinquency procedures, omitting that order is poor practice. If the Association's actual practice already complies with the statute, incorporating or summarizing the statutory order should present no difficulty. It would make the policy more accurate and more useful.

Again, the governing question should not be whether the policy can survive without stating the law. The question should be whether the policy should be improved once the omission has been identified.

Management Collection Fees and Reasonableness

I appreciate your clarification that the management-company charges referenced in the Collection Policy are asserted to be collection fees and costs, rather than late penalties governed by A.R.S. § 33-1803(A). To the extent my prior notice suggested that every such fee was automatically subject to the late-charge cap, that position should be narrowed.

The remaining concern is transparency and reasonableness.

The Collection Policy repeatedly states that owner-billed collection charges may change from time to time in Exhibit A of the Management Contract. Current A.R.S. § 33-1802(2) includes only reasonable collection fees and costs within the common expense lien framework.

Your letter states that the Association has no indication the charges are unreasonable and that they are in line with industry standards. I do not have sufficient information at this point to contest the reasonableness of any specific amount. My point is more basic: owner-facing policies should not imply that any charge inserted into a management-contract exhibit automatically becomes recoverable from the owner without the limitation of reasonableness and legal authorization.

If the Association is revising the Collection Policy, it should clarify that such fees are recoverable only to the extent they are reasonable, properly incurred or applied, and authorized by Arizona law and the governing documents.

Attorney-Fee Language

I understand your position that Paragraph 10 does not expressly classify pre-litigation attorney fees as part of a statutory common expense lien and that the sentence may be read as subject to applicable law.

That reading is possible. But the policy could say so clearly.

Under A.R.S. § 33-1802(2), attorney fees and costs incurred with respect to assessments become part of the statutory common expense lien only if they are awarded by a court. Under A.R.S. § 33-1807(K), attorney fees and costs occupy their place in the payment-application order only if awarded by a court.

If the Association does not intend to suggest that pre-judgment attorney fees automatically become lien-secured common expense amounts, the policy should be revised to avoid that implication.

III. Records Requests

Thank you for producing the signed Collection Policy resolution, the management agreement, and the collection engagement letter, and for clarifying that the Association does not possess further declarant-era adoption records for the 2018 Collection Policy.

Several records issues remain.

Violation, Fine, Delinquency, and Lien Templates

Your response states that the requested templates are work product of the Association's management company and are not records in the Association's possession.

I respectfully request that the Association reconsider that position or provide a more specific explanation.

Your response relies heavily on what the Association's actual notices allegedly say. For example, the Association's position on the timing of enforcement under A.R.S. § 33-1803(E) depends on whether the violation notice includes the statutory contest process. Without reviewing the notices themselves, that assertion cannot be evaluated.

Further, A.R.S. § 33-1805(B) refers to books and records kept "by or on behalf of the association and the board." I recognize that not every management-company internal form is necessarily subject to production. But a categorical refusal to provide homeowner-facing templates used to administer the Association's own enforcement and collection programs appears overbroad, particularly where those forms are being relied upon to defend the Association's legal position.

Accordingly, please either:

- provide the current operative templates, or representative redacted examples, for violation notices, fine notices, delinquency notices, statutory pre-collection notices, and lien notices; or
- identify with specificity the basis for withholding each category, including whether the Association has access to, approves, relies upon, or directs the use of those forms.

Payment-Application Records or Instructions

I acknowledge your statement that the Association has not adopted a formal payment-application policy and "simply follows the law."

To clarify, I am not requesting proprietary software architecture. I am asking whether there are any written instructions, workflows, coding rules, management directives, account-handling protocols, or other records used on the Association's behalf to apply payments in conformity with A.R.S. § 33-1807(K).

If no responsive records exist after a reasonable search, please confirm that expressly. If they do exist, they remain responsive.

Records Reflecting Review of the Collection Policy After Statutory Amendments

Your response asked for greater specificity regarding my request for records showing Board review of the Collection Policy after amendments to A.R.S. § 33-1807.

To clarify, I request any nonprivileged records reflecting review, discussion, analysis, or proposed revision of the Association's 2018 Collection Policy in light of amendments affecting:

- the definition or treatment of common expense liens;
- the definition or treatment of member expenses;
- foreclosure thresholds;
- payment application; or
- the thirty-day pre-collection notice requirement.

This includes, to the extent nonprivileged and otherwise subject to production:

- Board agendas or minutes;
- management recommendations;
- draft revisions circulated for Board consideration;
- nonprivileged transmittal communications; and
- records reflecting whether the policy was reviewed after the statutory changes.

If no such records exist, please confirm that plainly.

IV. Requested Path Forward

I appreciate that the Board has already referred both policies to counsel for review. I respectfully ask that the review be directed toward correction and clarification, rather than toward preserving language that counsel believes can be defended despite being outdated, unclear, or broader than the Association's actual position.

At minimum, I request that the Association consider revisions that:

- clarify the relationship between the fifteen-day fine sequence and the twenty-one-day written-response process described in A.R.S. § 33-1803(C);
- distinguish the statutory contest process from any discretionary hardship or leniency request;
- remove or revise Fine Policy language suggesting that fines and fine-related amounts are subject to the same enforcement as assessments;
- revise Collection Policy Paragraph 6 to reflect the current A.R.S. § 33-1807(L) notice requirement;
- clarify foreclosure-related language so that the policy does not suggest a materially broader or earlier remedy than A.R.S. § 33-1807(A) permits;
- distinguish statutory common expense lien amounts from member expenses and from any separate contractual lien theory the Association believes exists under the Declaration;
- incorporate or accurately summarize the statutory payment-application order under A.R.S. § 33-1807(K);
- clarify that attorney-fee recovery and lien treatment remain subject to the limitations imposed by current Arizona law; and
- place any revised policies on the agenda for a properly noticed open Board meeting and adopt them in open session.

I want to emphasize again that I am not seeking unnecessary conflict. I am trying to narrow the discussion to the points that are most important for clear, durable, and legally accurate Association governance. The Board and its counsel can protect the Association without defending avoidable ambiguity. In my view, the Association's interests are better served by policies that say plainly what the Association actually does and what Arizona law actually permits.

Respectfully, it is not a satisfactory long-term answer to tell homeowners that a policy may be misleading on its face, but that they should trust the Association to apply it more narrowly in practice. If the narrower interpretation is the Association's true position, the policy should say so.

Thank you again for your response and for the Association's attention to these matters. I look forward to receiving any supplemental records and to learning what revisions the Board elects to make following counsel's review.

Best regards,

[Owner's name redacted]

Santa Rita Ranch III Homeowner