



... A NEWSLETTER FOR ASSOCIATION OFFICERS AND DIRECTORS ...

COURTESY OF

HOMEOWNERS ASSOCIATION MANAGEMENT COMPANY

222 WEST GURLEY STREET - PRESCOTT ARIZONA - (520) 776-4479

Dispute Mediation Works

Especially Effective For Homeowners Associations

A cartoon in The New Yorker magazine several years ago depicted a cabin on a hillside. Various items in the scene were pointed out. 'The National Bird' was flying by overhead. The cabin was located in a 'National Park.' And, through the cabin window one could glimpse a man engaged in what was described as 'The National Pastime,' waving one arm and shouting into a telephone, "Sue them!"

FOR ANYTHING, ANY REASON.

While Americans have embraced the aggressive and competitive sport of lawyer-fighting, (which might be lightheartedly compared to cockfighting) hiring them to litigate over issues significant or otherwise and skyrocketing litigation costs have caused many to reexamine the value of lawsuits for problem-solving. Nowhere is this more apparent than in community associations, where disputes are a regular part of life. If you are a member of one - you know. Pets, parking, renters, late fees, fences... and an endless list of other issues are fuel for the fires of furious disagreement. The 'Community Association Law Reporter' is crammed full of cases like one in California where a dispute over a fence landed a homeowner with \$40,000 in his own legal fees and, when he lost the decision in court, forced him to pay the \$61,000 of community association legal fees as well. Or drapes. Litigating over a \$500 set of drapes ended up costing one association homeowner \$15,000 in legal fees. On top of which, after the legal jousting has ended, there you are living next door to the same people with whom you did battle by proxy. The war often settles down to a slow seething simmer and stays there for years. What a way to live. There's got to be a smarter way for alleged adults to resolve differences, you'd think. There is.

CALL OFF YOUR DOGS

Alternate Dispute Resolution (ADR) is the problem-solving method of choice for more and more homeowner organizations. Mediators who have been trained

through various chapters of the Community Associations Institute are available in many parts of the country. Participants in mediation or arbitration procedures between homeowner association members describe the results as astonishingly effective and satisfying. The cost for mediation services in most areas is low or nominal.

MEDIATION & ARBITRATION



There are two ways ADR can work: In mediation, the disputing parties take their problem to a third-party neutral, who is the mediator. Investigation and documentation of the complaint is made. The mediator conducts meetings in which he or she presents nonbinding resolution recommendations. Mediation is usually described as a nonbinding settlement. In some parts of the country, if both parties are willing to accept the terms of the recommended solutions offered by the mediator, a conciliation or consent agreement is drawn up. Both parties sign the agreement and it becomes an enforceable contract. Some groups that use this form of ADR insist that if both parties cannot reach an agreement the dispute proceeds to a public hearing of the association. The outcome of that hearing results in a binding agreement as well, which carries the same weight as a lower court decision. The other form of ADR is the process of arbitration in which both parties, at the outset, accept that the ruling of the arbitrator will result in a binding settlement. The American Arbitration Association, which is listed in the Yellow Pages of most cities, reports a steady increase of commercial mediations over the last six years. One of the Community Association Institutes books, 'Resolving Association Disputes,' by Vivian G. Walker, notes that the odds are 8 to 1 that mediation will result in a satisfactory settlement. A dispute mediation service created in 1991 in Hawaii reported an 85% success rate among those parties who could be brought together. Clearly, ADR is having an impact on the homeowner association community.

Legal Education Series

IF YOUR HOME IS SOLD BECAUSE YOU CAN'T MAKE THE PAYMENTS, CAN THE LENDER SUE YOU IF THE MONEY FROM THE SALE DOESN'T PAY OFF THE LOAN?

by: The Law Firm Of
FAVOUR MOORE WILHELMSSEN
PAYETTE & SCHUYLER, P. A.

Most people buy their homes with money borrowed from a bank or other lender. To protect itself in case the homeowner fails to repay the loan, the lender takes a mortgage or deed of trust on the home. Mortgages and deeds of trust both serve the same purpose. If the homeowner fails to repay the loan, the lender can force the home to be sold. This is known as a foreclosure sale. The key difference between a mortgage and a deed of trust is that a deed of trust allows the home to be sold without the lender going to court. With a mortgage, the lender must file a suit in the Superior Court before the home may be sold. With a deed of trust, the lender may either file a suit in the Superior Court or simply notify the trustee (usually a title company) that the homeowner has failed to repay the loan and the home should be sold. Because a deed of trust allows the home to be sold more quickly and without involving the court, most Arizona lenders use deeds of trust rather than mortgages.

When the loan is used to buy the home, the mortgage or deed of trust is called a purchase money mortgage or deed of trust. When the loan is for some other purpose — such as a home improvement loan, a personal loan for a vacation or a child's education, or a home equity credit line — the mortgage or deed of trust is not a purchase money mortgage or deed of trust. If the homeowner has both a purchase money loan and a loan for some other purpose, there may be two mortgages or deeds of trust on the home. If the homeowner fails to repay either loan, the lender may force the home to be sold. After the expenses of the sale are deducted, the money is paid to the lender. Sometimes, there is not enough money from the sale to completely pay off the loan. This newsletter discusses whether the lender can sue the homeowner if the money from the sale does not pay off the loan. For example, if

the loan is \$100,000 and the lender receives \$ 50,000 from the sale of the home, can the homeowner be sued for the unpaid \$50,000?

Under the Arizona statutes, there are two important situations where the lender cannot sue the homeowner for the unpaid balance of the loan:

1. The lender forecloses a deed of trust without going to court, the property is two and a half acres or less, and the property is used as a single one-family dwelling (including a condo or townhome) or a single two-family dwelling (duplex). In this situation, the lender must be satisfied with the money from the sale of the home. Since deeds of trust are more common than mortgages in Arizona, and few home lots exceed two and a half acres, this exception protects many homeowners. It applies regardless of whether the loan was used to buy the home or for some other purpose, but only if the lender forecloses the deed of trust without going to court.

2. The lender forecloses a purchase money mortgage or deed of trust by going to court, the property is two and a half acres or less, and the property is used as either a single one-family dwelling or a single two-family dwelling. This exception applies only if the loan was used to buy the home. If the loan was for some other purpose, a lender who forecloses a mortgage or deed of trust by going to court may sue the homeowner for the balance. (Remember, with a mortgage the lender must go to court.)

Except in these two situations, the lender may sue the homeowner for the balance. For example, if the home sits on more than two and a half acres, the lender may always sue the homeowner. The same is true if the home is still under construction and has never actually been used as a dwelling. (And, of course, the lender can always sue if the property is commercial property rather than a dwelling.) Even if the lender may sue the homeowner, how-

ever, there are important limitations. For example, a lender who forecloses a deed of trust without going to court must sue the homeowner within 90 days after the sale. Even more important, a lender can never recover more than the difference between the loan balance and the greater of the money from the sale or the fair market value of the home. If the loan is \$100,000 and the home sells for \$50,000 but the homeowner can prove the fair market value was \$75,000, the lender can recover only \$25,000 — not \$50,000. The recovery is in the form of a personal judgment against the homeowner (called a deficiency judgment). To pay the deficiency judgment, the lender may garnish the homeowner's wages or force the homeowner's other real or personal property to be sold by the sheriff.

A few other points are worth noting:

Usually, the lender may choose to waive the mortgage or deed of trust (in other words, not force a sale of the home at all) and sue the homeowner directly for the entire amount due under the loan agreement or promissory note the homeowner signed when he got the loan. This is not true, however, with a purchase money mortgage or deed of trust. Here, the lender may not sue the homeowner directly and must be satisfied with the money received from the foreclosure sale. Many homeowners incorrectly assume that they have no further liability if they sell to a buyer who assumes their mortgage or deed of trust. Unless the lender has agreed in writing to release the original homeowner, the original homeowner remains liable along with the buyer. If the buyer fails to repay the loan, the lender can look to the original homeowner. This is why the safest course is to have a buyer who gets a new loan to pay off yours.

Continued On Page #3

Your Association Newsletter

Community Association Newsletter Handbook

It has been said that a journey of a thousand miles begins with the first step. So it is with publishing your Association's Newsletter. That all important first step is to establish a Newsletter Committee. The Newsletter Committee will be responsible for gathering the information to place into your newsletter. This includes gathering the facts for the stories, verifying the accuracy of the information, writing the articles and distributing the newsletter throughout the development. In addition the Board in conjunction with the Newsletter Committee needs to decide on the size of newsletter, the frequency of publication, the method of distribution, the overall design and layout of the newsletter such as will it be in color or black & white.

In most Associations there are several budding authors or retired professionals from other fields who would welcome the opportunity to write on various topics for the Association's Newsletter. A newsletter needs to be informative, educational, entertaining, humorous and personal. The subject matter is almost limitless and can include recent Board actions, complemented actions, important information that all members need to be aware of, planned activities, financial reports, changes in the rules & regulations, home maintenance tips, meeting notices, opinion surveys, classified ads, seasonal reminders, Aunt Sara's apple pie recipe and on and on.

It has been demonstrated, in Associations that publish a newsletter, that the level of complaints and the petty bickering about the rules and the general complaints to members of the Board are almost non-existent. Yes, it can be a rewarding experience to serve on your Association's Board. A newsletter can help you obtain a majority consensus prior to any changes in the rules & regulations, a dues increase or the many other items a Board must deal with.

The question often arises as to how often should we publish our newsletter. The generally acceptable answer is if you have under 50 members a quarterly newsletter should suffice. If you have between 50 and 100 members it is suggested that you publish your newsletter bi-monthly. For all Associations of 100 or more members it is strongly recommended that a monthly newsletter be published.

The next question is what size. The most cost effective newsletter is printed back and front on 11 X 17 paper size. When folded this gives your four pages of 8½ X 11 sheets. In addition this provides a space for self mailing for off site distribution without the cost of an envelope. A newsletter of this size requires between 5 and 6 type-written pages.

You must also address distribution. It is recommended that you hand deliver a newsletter to every unit or home within your development and mail a copy to every owner that has an address of record outside the development. How many times have you heard the excuse "I didn't know." This method of distribution assures that every owner, guest and tenant receives the information. In distributing a newsletter in this manner you will meet the written notification requirements of your Covenants, Conditions and Restrictions and several state laws without the additional expenses of a separate mailing. You must also establish deadlines for publication and distribution. Members come to expect their newsletter at approximately the same time and many will call if you are not meeting your deadlines or publishing your newsletter on an infrequent schedule.

Newsletter costs are another consideration. By selling a small amount of advertising to local approved business your newsletter can pay for all or most of its production and mailing costs.

In closing lets address professional preparation. You have spent a great deal of

time in gathering your information. Don't limit the impression by running to the local quick print shop with poor copy prepared on a dot matrix printer or typewriter. We suggest that you use a Desktop Publisher for final preparation and printing. The small additional cost will be far outweighed by the impression and interest your newsletter generates in your membership.

Continued From Page #2

Many homeowners also inaccurately assume that they cannot be liable for a deficiency judgment following the foreclosure of their home if they record a Declaration of Homestead with the County Recorder. A Declaration of Homestead is a simple document that allows a homeowner to protect up to \$100,000 of equity in a home or mobile home. However, the protection is only available against non-consensual liens (meaning those the homeowner has not agreed to). For example, if someone obtains a \$10,000 judgment against you for damaging her car in an accident, and your home is worth \$50,000 more than you owe on it, you will be fully protected by a Declaration of Homestead since the judgment is a nonconsensual lien and your equity is less than \$100,000. Mortgages and deeds of trust, on the other hand, are consensual liens because the homeowner has agreed to them. Therefore, a Declaration of Homestead affords no protection against a deficiency judgment in situations where the lender is entitled to one.

The law governing the foreclosure of mortgages and deeds of trust is highly technical, with many pitfalls for both the lender and the homeowner. This is only a very general overview, and you should consult an attorney if you become involved in a foreclosure.

The Legal Educational Series is a newsletter of general interest to our clients and friends and should not be construed as legal advice. If it raises questions regarding a specific legal situation, we strongly urge you to contact your attorney before taking any action.

Options To Filing Your Association's Corporate Income Tax Return

by: Preston R. Lambson



Peculiar to condominium and homeowners' associations is the ability to choose which tax form to file and therefore which tax rate applies. The decision is not a clear-cut choice. One choice is Form 1120-H which is a relatively simple form but has certain qualification requirements and a 30% tax rate, which is higher for most condominium and homeowners' associations than the alternative Form 1120. However, Form 1120 can be very complex but result in a tax rate as low as 15%. There is also has a higher risk of making an error because there is a lack of IRS rulings in several areas. The choice of which form to file is made after analyzing income and expenses. Under one method, income and expenses are grouped into membership and nonmembership categories. Under the other option, income and expenses are grouped under exempt and nonexempt functions. These two methods do not result in identical groupings and can have different taxable results.

As you can see, the IRS has lived up to its reputation of ambiguity and confusion.

Please Help

Our normal business hours are from 9:00 A.M. until 4:00 P.M. Monday through Friday By Appointment Only. If you need to speak with your Project Manager or our Office Manager please call and make an appointment. We schedule and prioritize our time around financial deadlines, property inspections, meetings and emergency situations so that all Associations receive equal attention. When you just show up this disrupts our schedule and we may not be able to give your needs the proper attention they deserve. Please call for an appointment.

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We distribute "Leadership Monthly" to all Board Members & Officers who's Associations are clients of Homeowners Association Management. This we will continue to do as before.

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