

**President's Report
Springs Board of Directors Meeting
November 21, 2017**

Collecting Delinquent HOA Dues

A couple of months ago, Jeannie Mc Gaughey, our Office Manager, approached me with the suggestion that we might want to consider a different approach to collecting HOA dues that are not paid on time.

For many years, we contracted with our attorneys, Goldschmidt/Shupe, to collect delinquent dues and the arrangement was quite satisfactory. Last year, Goldschmidt/Shupe decided to get out of the collections business and recommended that we contract with the law firm of Maxwell and Morgan. That relationship has proven less satisfactory, in that the level of response and assistance has not been as positive and, perhaps more importantly, the fees they charge are significantly more. Here's a summary of our current agreement with Maxwell and Morgan:

1. We turn over the account to Maxwell and Morgan and they charge \$250 for the first demand letter, plus fees, which we have found amount to an additional \$150, plus postage.
2. The homeowner has 35 days to respond. If they do not respond, the law firm sends them a second letter which costs \$150.
3. If the homeowner does not pay or respond to the second letter, the attorneys place a lien on the property. Maxwell and Morgan estimate that if we choose to file a suit, the cost of the suit depends upon the amount owed but generally, if we are seeking to collect less than \$5,000, the fee is \$1200.

As I see it, there's a couple of problems with this arrangement:

- If the law firm is successful in collecting the fees from the homeowner, we get our money back. But that is not guaranteed. Sometimes we will only receive reimbursement when the home is sold. Sometimes there will be other liens on the property that take priority over ours and we will get nothing.
- Even if we recover our money, it places a significant financial burden on the homeowner. In talking with Jeannie Mc Gaughey and Roger Olson, it has become clear that failure to pay dues is almost never a case of a homeowner defiantly refusing to pay or withholding payment because they have a grievance with the HOA. Usually it is because the homeowner simply doesn't have the money or because they are too impaired to respond to the request for payment. Sometimes it is because a relative is paying their bills and the billing doesn't initially make its way to the relative.

When Jeannie and Gene Mc Gaughey belonged to a HOA in California, the HOA addressed delinquent accounts by filing a claim in Small Claims Court. Filing in Small Claims Court usually requires a filing fee of \$24 in Arizona. The filing generally served the purpose of getting the attention of the delinquent homeowner. The homeowner would be required to appear in court and the filing has the effect of placing a lien on the homeowner's property if the homeowner is not responsive.

This approach makes much more sense in my mind. Therefore, I would recommend to the Board:

That in the collection of delinquent dues we adopt the use of Small Claims Court for a one year (2018) trial period and at the end of one year assess whether it better meets our needs and the needs of the homeowner than the use of a law firm.

Schedule of Fines

This past week we received notification from our attorneys, Goldschmidt/Shupe, of the enactment of a new Arizona law that requires Planned Communities to establish and disseminate a schedule of fines for specific infractions in advance of the imposition of any fine. Failure to establish the schedule in advance will result in the negation of the fine. Below are some key quotes from the new law:

According to the Arizona Planned Communities and Condominium Acts, “after notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association.” The Arizona Court of Appeals recently issued an opinion that has defined how a trial court will determine the reasonableness of a monetary penalty and, therefore, whether the penalty is collectible. The case is *Turtle Rock III Homeowners Association v. Fisher*, 1CA-CV 16-0455 (copy attached) and the pertinent holding states that:

“[m]onetary fines must be reasonable. See A.R.S. §33-1803(B). Ad hoc fines are per se unreasonable [citation omitted]. [E]ven where the HOA has the authority to levy fines, it must promulgate the schedule of fines prior to imposing the fines, and the failure to prove promulgation is fatal.”

The opinion further states that an HOA must present “competent evidence of a fee schedule timely promulgated (i.e., adopted and distributed to members) demonstrating the fine amounts and the appropriateness of such amounts. Otherwise monetary penalties are per se unreasonable.”

In order to comply with the law, I would recommend:

That the Board ask the ARC, in collaboration with the Enforcement Agent, to develop a schedule of specific fines and submit them to the Board for our review and approval not later than the January, 2018 meeting.

Respectfully submitted,

David G Dethmers