

## HOA AND TAX LIEN ISSUES

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## HOMEOWNERS ASSOC. DUES

### ○ A Hidden Problem

- › Creation – with the original subdivision; developer creates HOA with Covenant, Conditions and Restrictions.
- › Part of the title to the land so it “runs with the land”
- › Can it be removed or will they “haunt” forever?

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## HOMEOWNERS ASSOC. DUES

### ○ Homeowner's Association Remedies:

- > 1. They can foreclose on someone's personal residence in Arizona
- > 2. They can sue on the debt and garnish
- > 3. The remedies are not mutually exclusive, i.e. election of remedies does not apply.
- > 4. They can record a judgment lien which will attach to the land and stay there until paid [includes attorneys fees, costs and interest]

## HOMEOWNERS ASSOC. DUES

Possible Remedies: Pre-Filing ONLY

### A. Bankruptcy – Chapter 7

1. cannot discharge the lien but can discharge personal liability for anything pre- filing
2. Anything accruing after filing is still due and payable. 11 USC § 523(a)(16)
3. Lien survives but is subordinate to first DOT

### B. Bankruptcy – Chapter 13

1. Can lien strip if homeowner's first DOT is greater than the value of the home.
2. Post filing dues still accrue if Homeowner continues to have a possessory interest in the property.

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## HOMEOWNERS ASSOC. DUES

### ⦿ Other solutions?

- "surrendering" in Chapter 7 - Doesn't work if lender won't foreclose or conduct a trustee's sale. See In re Burgueno, 2011 Bankr. LEXIS 1956, (Bankr. D Az. 2011)
- Chapter 13 solution? Put residence in plan with title transferred to lender. See In re: Rosa 495 B.R. 522 (Bankr. D. Hi. 2013)

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## REAL PROPERTY TAX LIENS

- ⦿ County Government has the authority to put a lien on any property in its jurisdiction for unpaid property taxes.
- ⦿ **Interest rate is 16% ARS 42-18053**
- ⦿ If not paid within 3 years can be sold at auction.
- ⦿ If homeowner does not redeem the certificate within 3 years of its sale the property can be foreclosed upon by judicial foreclosure. ARS §42-18152

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## REAL PROPERTY TAX LIENS

- WHEN DOES IT BECOME AN ISSUE?

1. Homes without mortgages [because first lienholder will usually pay to avoid foreclosure]
2. Reverse Mortgages – generally a condition of mortgage that homeowner keep taxes and insurance current.

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## REAL PROPERTY TAX LIENS

- Judicial Foreclosure by Certificate holder
  - [ARS §42-18201 et seq.]
- Requirements:
  - > 1. At least 30 day written notice of intent to file (but not more than 180 days)
  - > 2. Certified mail to listed addresses/entities
- Redemption still possible [but can include atty's fees and costs]

IF HOMEOWNER DOES NOT RESPOND  
FORECLOSURE WILL HAPPEN AND TITLE IS LOST

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## REAL PROPERTY TAX LIENS

- **SOLUTIONS?**
- 1. Pre-sale : work out payment schedule so that oldest year is paid before sale; work on remainder thereafter
- 2. Post-sale?
  - > A. Work out payment with cert. holder
  - > B. File Chapter 13 bankruptcy with payment plan.

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