



VIA E-MAIL ONLY
(debowpollard@gmail.com)

March 17, 2022

Board of Directors
The Gardens Homeowners Association
c/o Director Deborah Pollard

Re: *Association's Ability to Enforce Owner's Obligation to Maintain*

Dear Board of Directors:

On behalf of The Gardens Homeowners Association's ("Association") Board of Directors, Director Deborah Pollard requested that our firm review the Association's Declaration of Horizontal Property Regime And Declaration of Covenants, Conditions and Restrictions Establishing For The Gardens, A 43 Unit Condominium recorded with the Maricopa Recorder's Office at Instrument No. 1980-0316682 ("Declaration") and determine the Association's ability to enforce an owner's obligation to maintain those items specified on the Association's Maintenance Policy and Chart. Additionally, Director Pollard inquired as to whether the Association could perform maintenance of an item that an owner fails to maintain and charge the Association's cost incurred for such maintenance back to the owner.

Article 11 of the Declaration states in part: "Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs or replacements within his own unit and any of the portion of the air-conditioning/heating system which exclusively serves his Unit..."

Article 22 of the Declaration titled "Remedies" provides that that the Association may bring legal action, including an injunction, against an owner who is in default of any provisions of the Condominium Act, the "Declaration, the Articles, the Bylaws or the rules and regulations of the Association." Thus, if an owner fails to maintain an item specified on the Association's Maintenance Policy and Chart, then the Association can issue violation notices to the owner, placing the owner on notice of the failure to maintain an item is a violation and providing an opportunity for the owner to perform such maintenance. If the owner continues to fail or refuse to perform such maintenance, then the Association may file a lawsuit in

Maricopa County Superior Court for breach of contract and injunctive relief against the owner. Such lawsuit would ask the Court to find the owner in breach of the Declaration and ask the Court to order the owner to perform the maintenance of the item(s) noted by the Association. The Association would seek its attorneys' fees and court costs for such lawsuit against the defaulting owner pursuant to Article 22 of the Declaration.

The Association's Declaration does not authorize the Association to perform maintenance obligations of an owner and charge those costs back to the owner, following only written notice to the owner. Nearly all newer association declarations contain such a provision. If the Board seeks to amend the Declaration in the future, I would recommend adding such language to a proposed amendment.

Please contact me with any questions regarding the above or further instruction from the Board.

Very truly yours,

/s/ Chandler W. Travis

Chandler W. Travis

From: Chandler Travis CTravis@travislawaz.com
Subject: RE: The Gardens - Enforcing Owner's Obligation
to Maintain
Date: Mar 22, 2022 at 9:16:56 AM
To: Deborah Pollard debowpollard@gmail.com
Cc: Leanne Diliberto ldiliberto@wearevision.com

Hello Deborah,

In regards to your process below, there is no requirement that the owner sign an "approval for the cost" of the maintenance of the trellis. The Association should obtain a couple bids and then Board decides which bid to accept.

I located ARS §33-1247(A) of the Condominium Act which states: "On reasonable notice, each unit owner shall afford to the Association and the other unit owners, and to their agents or employees, accessed through the unit reasoning necessary for those purposes." Thus, if the owner refuses to grant the Association access to perform maintenance on the trellis or other items that the Association is responsible to maintain, the Association can provide written notice to the owner of its intent to access the unit to perform necessary repairs. Such written notice would include the date and time along with the name of contractor that will be performing the maintenance. The event the owner still continues to refuse access, then the Association may be forced to proceed with a lawsuit against the owner.

Please contact me with any additional questions regarding this issue.
Thanks.



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From: Deborah Pollard [<mailto:debowpollard@gmail.com>]
Sent: Friday, March 18, 2022 6:16 AM
To: Chandler Travis <CTravis@travislawaz.com>
Subject: Re: The Gardens - Enforcing Owner's Obligation to Maintain

Thank you Chandler for the response. I would like some clarification that involves a specific hypothetical situation.

If the trellis on the back of a homeowners unit is in need of repair or maintenance. This trellis has not been altered by the homeowner. According to our matrix, this the HOAs responsibility to maintain. The board would go through the following process to take care of that maintenance.

1. Notify the homeowner with a written proposal for the maintenance, a request for access to the property and signed approval for the cost to be charged back to the homeowner.
2. If the homeowner does not provide access or approval of the cost, the HOA would have to file a lawsuit as the next course of action.

Please confirm the above process for this specific scenario or provide clarifications if I have not interpreted your letter correctly.

Thank you, Deborah