IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION TWO

WINDROSE ESTATES HOMEOWNERS ASSOCIATION ("Association"), Plaintiff/Appellee, v. JUSTIN WRIGHT ("Wright"), Defendant/Appellant	No.: 2 CA-CV 24-0074 2 CA-CV 25-0058 Cons Maricopa County Superior Court No.: CV 2023-015900
JUSTIN T. WRIGHT, an unmarried man, Plaintiff/Appellee, v. SUNSTATE ACQUISITIONS, LLC, an Arizona limited liability company; SV 1 LLC, an Arizona limited liability company ("Buyers"), Defendants/Appellants.	

AMICUS CURIAE BRIEF OF THE ARIZONA CHAPTER OF COMMUNITY ASSOCIATIONS INSTITUTE (AZ CAI)

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I.

IDENTITY AND INTEREST OF AMICUS CURIAE

Community Associations Institute (CAI) is an international organization dedicated to providing information, education, resources and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management on a national and local chapter level. CAI's more than 43,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 77 million homeowners who live in more than 369,000 community associations in the United States.[1]

CAI supports public policy that recognizes the rights and responsibilities of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

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[1] FOUND. FOR CMTY. ASS'N RESEARCH, *Statistical Review: Summary of Key Ass'n Data and Info*, https://foundation.caionline.org/publications/factbook/statistical-review/ (last visited August 1, 2025).

The Arizona Chapter of CAI serves approximately 2,249,000 Arizonans who live in more than 10,100 different community associations throughout the state.[2] Residents in Arizona pay approximately $4.4 billion a year to provide services and maintain the needs of their respective communities.[3] Approximately 77,200 Arizonans dedicate and volunteer in their community associations each year, providing $93.5 million in valuable service to their communities.[4] The local Arizona chapter of CAI ("AZ-CAI") is representing not only itself, but also its tens of thousands of members on this important issue. This brief is filed through and on behalf of AZ-CAI.

AZ-CAI is dedicated to preserving the rights of homeowners and community associations, especially those specifically provided to them by the Arizona legislature. AZ-CAI recognizes that the potential ramifications of applying a 20% threshold for price adequacy in judicial foreclosures of Common Expense Liens in Arizona will have a significant negative impact on both homeowners and community associations, especially when properties are sold subject to senior liens that must be

[2] FOUND. FOR CMTY. ASS'N RESEARCH, *Az Comm. Ass'ns Facts & Figures*, https:// https://www.caionline.org/getmedia/db9daac6-c548-4172-b058-e6aec6da78fd/arizona-statefactsfiguresonepagers2024.pdf/ (last visited September 4, 2025).

[3] ID.

[4] ID.

accounted for in the price adequacy calculation. To that end, AZ-CAI supports the Association's and the Buyers' request to overturn the decision of the trial court and dismiss the underlying lawsuit seeking to set aside the sheriff sale.

II.

INTRODUCTION

Over 2.2 million residents live in one of the approximately 10,200 community associations in Arizona (more than 30% of Arizona residents) and approximately 77.1 million people live in community associations throughout the United States.[5] AZ-CAI is uniquely situated to be highly sensitive to the interests and concerns of both homeowners and community associations. Decisions that drastically overhaul or limit the operations of community associations garner the attention of AZ-CAI. While the Trial Judge's focus on strictly applying the 20% price disparity standard mentioned in the *Krohn* case may have appeared to be well founded on the surface, the Judge failed to apply § 33-1807 of the Arizona Revised Statutes and failed to contemplate the implications this high standard would have with respect to community associations and homeowners in those associations as a whole given the *de facto* disparity between assessments and home values.

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[5] FOUND. FOR CMTY. ASS'N RESEARCH, *The Community Association Fact Book, National and State Statistical Review for 2024,* https://foundation.caionline.org/wp-content/uploads/2024/06/Arizona-StateFactsFiguresOnePagers2024.pdf (last visited August 1, 2025).

Community associations serve a vital function in the State of Arizona and throughout the country. Collectively, the community associations in Arizona own and care for thousands of acres of real property and are responsible for managing and maintaining millions of dollars' worth of improvements. Community associations commonly hold the responsibility to landscape and maintain common area parks and green belts, club houses and lakes. In addition, they often carry maintenance responsibilities with respect to: (i) the roofs covering units with shared walls, (ii) parking lots, and (iii) private streets. Community associations also procure insurance to protect against liability for injuries that may occur on the common areas. These responsibilities cannot be performed without proper and adequate funding.

The financial engine of community associations in Arizona is the assessment obligation established in the governing documents and protected by statute. Currently, community associations in Arizona only have three viable options to ensure those assessments are paid. One is through a personal claim for breach of contract against any homeowner who fails to pay assessments. Another is through a contractual lien against the real property located within the community association imposed under the restrictive covenants. The last is through the imposition of a Common Expense Lien against the real property located within the community association—a right which has been codified under the Arizona Planned Communities Act at A.R.S. § 33-1801 et seq., and the Arizona Condominium Act at

A.R.S. § 33-1201, et seq. These remedies available to community associations help ensure that they can continue to provide valuable services to their homeowners and avoid widespread disrepair in Arizona's neighborhoods.

While community associations, in some instances, may obtain judgments for unpaid assessments and collect such through garnishment proceedings and judgment liens on real property; frequently, that avenue becomes unavailable, either because of the protections afforded debtors under laws such as the recently passed Prop 209, or because of a general lack of discretionary funds to pay the delinquency. The critical importance of assessments has been recognized by the legislature which has provided a fair, efficient and effective way to collect through foreclosure of the Common Expense Lien to recover needed funds to keep the community running.

This important collection avenue is threatened by the Trial Court's decision.

III.

ARGUMENT

A. The Judiciary Should Not Impose New Standards Into The Legislative Framework.

Under well-established principles of statutory interpretation, Arizona courts are to construe statutes in a manner that gives effect to the legislature's intent and avoid rendering any statutory provision or remedy superfluous, or without practical effect. Courts have consistently held that statutory remedies must not be rendered moot by judicial interpretation, as doing so would undermine the legislative intent and the statutory framework. Specifically, in cases where statutory remedies are available, courts have emphasized that these remedies must be pursued and cannot be displaced by common law claims or other interpretations that would render the statutory remedy ineffective.

In *Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, 255 Ariz. 382, the court reiterated that statutory interpretation requires determining the plain meaning of the words in their broader statutory context. It emphasized the importance of harmonizing statutory provisions to avoid contradictory interpretations and ensure meaningful operation of all provisions. *Columbus Life Ins. Co. v. Wilmington Trust, N.A.*, 255 Ariz. 382. Further, in the case of *Toma v. Fontes*, 258 Ariz. 109, the court stated that clear and unequivocal statutory language must be given effect without resorting to other rules of construction. *Creasman v. Farmers Cas. Ins. Co.*, 681 F. Supp. 3d 1051, is also instructive because the court explained that if statutory language is clear, it must be applied as written unless doing so would lead to impossible or absurd results.

These principles align with the broader legal doctrine that courts must respect the legislative intent behind statutory remedies and ensure their practical application, avoiding interpretations that would nullify or undermine their purpose. *See Calvert v. Farmers Ins. Co.*, 144 Ariz. 291, 294, 697 P.2d 684, 687 (1985).

Arizona's Legislature has established a specific policy for community association lien foreclosures through A.R.S. § 33-1807, which allows foreclosure if "the owner has been and remains delinquent in the payment of assessments, for a period of one year or in the amount of $1,200 or more, whichever occurs first, as determined on the date the action is filed." A.R.S. § 33-1807.[6] This statutory framework reflects a legislative balance between the interests of associations in collecting assessments and the rights of homeowners. Notably, A.R.S. § 33-1807 does not mention a 20% equity rule or give trial courts the ability to prohibit a community association from foreclosing on a lien that meets the statute's requirements. The judiciary should not impose additional standards that disrupt this balance, such as the 20% equity rule from *In re Krohn*, 203 Ariz. 205, 210, ¶ 18, 52 P.3d 774, 779 (2002).[7]

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[6] For the sake of transparency, the 2025 Legislative Session passed an amendment to A.R.S. § 33-1807 which goes into effect on September 26, 2025. The new thresholds that must be met to foreclose on the Common Expense Lien for Planned Communities will be $10,000 or any part of an assessment payment being delinquent for a period of 18 months.

[7] Applying the *Krohn* rule to HOAs does not properly account for the foreclosure transaction; by Arizona statute –A.R.S. 33-1807(C)(2) - an HOA does *not* extinguish a first mortgage lien interest; thus, even if the *Krohn* rule were applied in this case, once accounting for the approximate $800,000 first mortgage in addition to the amount paid at foreclosure sale to obtain the HOA's interest, the transaction is in far excess of the 20% equity rule.

If the Court of Appeals upholds the lower court's decision, it would be contrary to the plain language of A.R.S. § 33-1807, render the statute meaningless, and make foreclosure an impractical remedy for community associations in Arizona. Third parties will be deterred from bidding on properties foreclosed by community associations due to the risk of having their bids set aside, leading to financial instability for associations and unfair burdens on homeowners who pay their assessments. This outcome would contravene the legislative intent and harm the community associations that millions of Arizonans call home.

Under this logic, foreclosure becomes unavailable as a practical remedy for Arizona community associations seeking to collect delinquent assessments. If a bright-line 20% equity rule were applied to Common Expense Lien foreclosures, as advanced in *Krohn* and the Restatement (Third) of Property, it would functionally eliminate the utility of A.R.S. § 33-1807. Community associations would be forced to absorb substantial unpaid assessments, leaving the burden of those delinquencies to be shouldered by the remaining homeowners who do pay—effectively penalizing compliant owners while shielding those who fail to meet their obligations.

This is not a mere hypothetical concern. The statutory framework presumes that enforcement of liens, including foreclosure, is a legitimate and essential tool to ensure fiscal responsibility within the community. The statute contains its own procedural safeguards, including the six-year limitations period, notice requirements, and the homeowner's opportunity to cure the delinquency. Layering an additional 20% equity requirement atop those protections would impose a judicially created hurdle that finds no support in the text or intent of A.R.S. § 33-1807.

Indeed, applying the Restatement's commercial fairness standard—developed primarily for mortgage foreclosures involving private lenders—to the assessment lien context misconstrues the nature of the relationship. A homeowner's association is a forced creditor because it does not choose its members. Instead, prospective purchasers unilaterally choose the homeowners association it will be a part of by purchasing into the community. That purchase binds the owner to the applicable rules and obligations including payment of assessments. The obligation to pay assessments is not voluntary; it is a mutual, mandatory burden tied to the equitable operation of the community. Allowing one homeowner's debt to erode the collective financial base of the association would undermine the statutory scheme and destabilize the common-interest ownership model altogether.

For these reasons, the 20% equity threshold advanced in *Krohn* and the Restatement should not apply in the context of Common Expense Lien foreclosures. The Court should reject any attempt to graft such a rule onto a fundamentally different statutory and contractual framework.

B. **<u>If This Court Does Not Act, Community Associations Will No Longer Be Able To Foreclose On The Common Expense Lien.</u>**

Applying a rigid 20% price disparity threshold as the standard for determining whether the foreclosure of a Common Expense Lien "shocks the conscience" would effectively nullify the foreclosure rights expressly granted to Arizona community associations under A.R.S. § 33-1807. By design, the foreclosure of a Common Expense Lien often involves lien amounts that are modest in comparison to the underlying fair market value of the property. As a result, if a 20% disparity between the lien amount and the sale price is treated as a per se violation of due process or equity, nearly every lien foreclosure authorized by A.R.S. § 33-1807 would be invalidated on that basis alone. Such a standard would render the statutory foreclosure remedy illusory and unenforceable in practice—an outcome that directly contravenes the legislative intent behind the statute. Courts are obligated to interpret statutes in a manner that gives effect to all provisions, not in a way that renders them superfluous. Therefore, the "shocks the conscience" inquiry should be inapplicable to Common Expense Lien foreclosures because a bright-line percentage rule swallows the foreclosure statute whole.

For example, the median monthly assessment charged by many Arizona community associations ranges between $100 and $150 per Lot.[8] Under A.R.S. §

[8] In this case, the Association charged $145 per month for assessments.

33-1807(G), a Common Expense Lien expires if not enforced within six years. Over that statutory period, even assuming the higher-end monthly assessment of $150, the total delinquency recoverable through lien enforcement would amount to $10,800 (72 months[9] x $150). In contrast, the current median home value in Arizona is approximately $321,400.[10] [11] A foreclosure under these circumstances would represent only 3.36% of the property's value—far below any proposed 20% "shock the conscience" threshold. There would almost never be a scenario where 6 years' worth of delinquent assessments would reach the proposed 20% value requirement.[12] In effect, adopting a bright-line 20% rule would transform an equitable standard into an absolute bar and render the statute a dead letter.

The Arizona Supreme Court gave this Court guidance on how that outcome can be avoided. First, the *Krohn* Court stated that it would follow the Restatement

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[9] 72 months referenced in the example aligns with the six-year statutory period to bring an action involving the Common Expense Lien pursuant to A.R.S. § 33-1807(G).

[10] FOUND. FOR CMTY. ASS'N RESEARCH, *The Community Association Fact Book, National and State Statistical Review for 2024,* https://foundation.caionline.org/wp-content/uploads/2024/06/Arizona-StateFactsFiguresOnePagers2024.pdf (last visited August 1, 2025).

[11] Wright's home was apparently valued at $1.2 million which would create an even bigger price disparity.

[12] This analysis doesn't even factor in the financial harm the Association would have to endure for 6 years before it could even hope to raise the price disparity to 3.36% before initiating the foreclosure process.

unless previous decisions or legislative enactment existed. *In re Krohn*, 203 Ariz. 205, 210, ¶ 18, 52 P.3d 774, 779 (2002). Here, the Arizona Legislature has acted to create something unique to community associations. Absent contrary authority, the Trial Judge should have resorted to the statutory framework set in place by the Legislature rather than apply an oversimplified bright line rule.

Second, the Arizona Supreme Court did not intend to create a bright line rule. Instead, it always intended for each circumstance to be decided based on the facts and arguments of the case. The Court stated: "[T]he Restatement indicates that twenty percent of market value is generally considered a grossly inadequate price. The parties, of course, are free to argue under the facts of a particular sale that a different percentage is or is not grossly inadequate. *See* Restatement § 8.3 cmt. b *and* illus. 6." *In re Krohn*, 203 Ariz. 205, 213, ¶ 34, 52 P.3d 774, 782 (2002). In other words, different percentages in different fact patterns may require setting the "shocks the conscience" standard below the *general* 20% threshold *suggested* in the Restatement.

The foreclosure of an association's Common Expense Lien in Arizona is a unique statutory remedy that requires a particularized analysis of the "shocks the conscience" standard instead of the arbitrary application of 20% of market value. The *Krohn* case was dealing with a first mortgage with no other superior lien rights encumbering the property. In such circumstances, 20% of market value would be responsible. Contrarily, in this case, the Association's lien was subject to the first mortgage. The Buyers had to purchase the property at the foreclosure sale subject to the first mortgage. Thus, even though they acquired the property by paying off the Association's minor lien amount, that only allowed them to purchase property that is encumbered by a mortgage. Utilizing the same 20% threshold in that scenario makes little sense.

In sum, the Trial Court should have applied A.R.S. § 33-1807 in which the Arizona Legislature already set the threshold for a foreclosure (its own bright line test) at assessments "delinquent one year or in the amount of $1,200 or more, whichever occurs first." Alternatively, if A.R.S. § 33-1807 is not deemed to establish a threshold (bright line), the Trial Court should have utilized the unique circumstances of this type of foreclosure to determine that applying the "bright line" 20% of market value standard would create an unjust result not intended by the Legislature. Accordingly, the Trial Court's decision should be reversed, and the quiet title action should be dismissed.

C. There Is Precedent For Using A Different Standard Than The 20% Shocks The Conscience Standard Espoused In *Krohn*.

This Court does not need to look far to find examples of foreclosure cases where the "20% bright line" rule was deemed inapplicable.

In *Mason v. Wilson*, 116 Ariz. 255, 257, 568 P.2d 1153, 1155 (App. 1977), the Arizona Court of Appeals upheld a sheriff's sale despite a significant disparity between the sales price and property value. The Court noted that although the purchase price of the property was only $367.41, which amounted to a mere 5.7% of the property's equity after considering a $22,147.04 superior mortgage, this disparity "alone [was] not enough in itself to justify setting aside the sale on appeal." *Id.* at 257, 568 P.2d at 1155. The Court's reasoning was grounded in the practical reality that the actual equity in the property was between only $2,000 and $6,000, underscoring that whether a foreclosure price "shocks the conscience" must depend on the unique facts of each case rather than an arbitrary percentage threshold.

Another compelling example is Arizona's tax lien foreclosure scheme, which demonstrates the Legislature's intent to create foreclosure processes exempt from a rigid "shocks the conscience" standard. In Arizona, with median home values of approximately $321,400 and typical property taxes at 0.6% of value, an annual tax obligation is around $1,930. Under A.R.S. § 42-18204(A)(1), a tax lien foreclosure can be pursued based on one year of delinquent taxes, and the statute mandates the court to foreclose redemption rights and issue a deed to the purchaser if statutory requirements are met. These foreclosures not only occur for amounts far below the 20% threshold but also extinguish all other liens and encumbrances—yet they are fully enforceable and not subject to a "shocks the conscience" analysis.

If the Legislature can create a tax lien foreclosure system with consequences far more severe than those of an HOA assessment lien foreclosure—without imposing a 20% minimum-value rule—it logically follows that the Legislature likewise intended for the HOA assessment lien foreclosure process under A.R.S. § 33-1807 to operate independently of the "shocks the conscience" standard. This statutory framework is deliberate and should be enforced as written, without judicially grafting a bright-line equity rule that would undermine its purpose.

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IV.

CONCLUSION

The Arizona Chapter of CAI respectfully urges the Court of Appeals to reverse the lower court's decision and clarify that the "shocks the conscience" standard is not applicable to HOA lien foreclosures under A.R.S. § 33-1807 and 33-1256. The legislative framework should govern these foreclosures, ensuring that associations can effectively collect assessments and maintain financial stability, protecting members in the communities they serve.

Respectfully submitted,

DATED: September 10, 2025 MAXWELL & MORGAN, INC.

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