No. 18-

IN THE

Supreme Court of the United States

SIXTY-01 ASSOCIATION OF APARTMENT OWNERS,

Petitioner,

v.

PENNY D. GOUDELOCK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

When a condominium owner files a Chapter 13 bankruptcy, some courts are extending the discharge of "debts" to eliminate all personal liability for future condominium assessments – even though the owner continues to reap the benefits from owning property in the community. This stretches the definition of a "debt" beyond recognition, abrogating fundamental laws of federalism, due process, and ripeness. Debtors are being given not just a "fresh start", but a "free pass" in contravention of state laws that treat future assessments as a property interest flowing from a covenant running with the land.

The questions presented are:

1. Does the Bankruptcy Code discharge community association assessments that accrue after the filing of a Chapter 13 bankruptcy even if the debtor retains ownership of the real property?

2. If the Bankruptcy Code discharges future community association assessments, does this violate the Takings or Due Process Clauses of the Fifth Amendment of the U.S. Constitution?

3. If the Bankruptcy Code discharges future community association assessments, does this violate the ripeness doctrine?

LIST OF PARTIES

The caption of the case contains the names of all the parties.

CORPORATE DISCLOSURE STATEMENT

Sixty-01 Association of Apartment Owners is a Washington state, privately owned, non-profit corporation. It has no parent corporation and issues no stock.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

STATUTES AND OTHER AUTHORITIES

Page

Page

I. OPINIONS BELOW

The opinion of the Ninth Circuit is reported at 895 F.3d 633 and reproduced at Appendix A. The opinion of the District Court for the Western District of Washington is not reported but available under Case No. C15-1413-MJP, Docket #10 and reproduced at Appendix B. Finally, the original opinion of the Bankruptcy Court of the Western District of Washington is available under Case No. 15-01093-TWD, Docket #17 and is not reproduced.

II. STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit was entered on July 10, 2018. Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Because this writ may question an Act of Congress (the constitutionality of a provision of the federal Bankruptcy Code), 28 U.S.C. § 2403(a) may apply and this writ has been served on the Solicitor General and Attorney General in accordance with Supreme Court Rule 29(b).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2 of the U.S. Constitution. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States…"

Amendment V of the U.S. Constitution. "No person shall… be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Federal and state statutes are reproduced at Appendix C.

IV. STATEMENT OF THE CASE

a. Introduction

The laws affecting mortgages, receiverships, landlords and tenants, utility companies, and governmental taxes all share a lengthy history in American jurisprudence and thus evolved in conjunction with the laws of bankruptcy. Community associations (which include condominium associations, homeowners associations, and cooperatives), in contrast, are relatively new legal entities in our country and have largely been ignored in the bankruptcy context. In 1970, there were only 2.1 million Americans living in community associations; that number is now over 70 million – somewhere between 22-24% of the population. *Statistical Review for 2017*, Cmty. Ass'ns Inst., (https://foundation.caionline.org/wp-content/uploads/2018/06/2017StatsReview.pdf), attached as Appendix D. Community associations provide basic, ongoing services such as utilities, insurance for the common areas of the property, repairs to the building structures, landscaping, and many other quasi-governmental functions. *Id.* An estimated $90 billion of assessments are collected from homeowners each year to fund these essential obligations. *Id.*[1]

1. Petitioner has been notified that, court permitting, Community Association Institute will file an *amicus* brief demonstrating the significance of community association in modern America and the impact of the Ninth Circuit's decision upon those 70 million people.

The Ninth Circuit has ruled that individuals who file a Chapter 13 bankruptcy and obtain a standard discharge of their debts pursuant to 11 U.S.C. § 1328(a) receive not only a discharge of the assessments that were assessed as of the date they filed their bankruptcy petition, but also of all assessments that might ever come due so long as they own the real estate ("post-petition assessments"). The lower court reasoned that post-petition assessments can be construed as contingent or unmatured debt stemming from a pre-petition obligation (a body of covenants recorded against the property that imposes liability on whoever happens to own the real property at the time an assessment is levied), and thus were included in Congress' broad definition of what constitutes a "debt" under 11 U.S.C. § 101(5), (12). Appendix A at 9-10a.

The lower court similarly concluded that there is no constitutional concern with eliminating future *in personam* liability of debtors who own real property within a community association despite state law indicating that those rights are a type of property interest arising out of the association's covenants that run with the land. Appendix A at 14a. Although the Ninth Circuit is the first Court of Appeals to rule on this issue as it pertains to Chapter 13 bankruptcies, bankruptcy and district courts have struggled with it for decades with no meaningful guidance from Congress. Moreover, there are conflicting Seventh and Fourth Circuit Court of Appeals decisions on the same issue when it was pertinent to Chapter 7 bankruptcies. Appendix A at 6-7a.

To be discussed in greater detail below, the Ninth Circuit's decision is worthy of review by this Court for the following reasons:

1. Review will resolve a longstanding split of authority as to whether post-petition assessments are discharged under 11 U.S.C. § 1328(a).

2. Review will provide much needed guidance to the lower courts on how principles of federalism must be considered in interpreting "when" a claim arises. Future debts are not subject to discharge under the Bankruptcy Code whereas "contingent" or "unmatured" debt is.

3. Review will provide guidance as to how explicit the Bankruptcy Code must be before eviscerating what the states have identified as a property right arising out of a covenant running with the land, and further whether such extirpation is permitted under the Fifth Amendment's Takings and Due Process Clauses.

4. Review will decide how far into the future a claim can go before adjudication by the bankruptcy courts frustrates the doctrine of ripeness, which limits federal courts to hearing "actual" cases and controversies.

5. Review is necessary to either restore the viability of community associations in funding their quasi-governmental services and the lifestyle of 70 million Americans, or at the very least signify to Congress that the Bankruptcy Code must be amended to clarify the issue raised with respect to the collectability of post-petition assessments.

b. Overview of Facts & Practical Effects of the Ninth Circuit's Decision

This case comes on appeal after the Ninth Circuit reversed the decisions of the bankruptcy and district courts in the Western District of Washington which found Respondent Penny D. Goudelock ("Debtor") personally liable for community association[2] assessments that were assessed against her after she filed a Chapter 13 bankruptcy petition in 2011. She obtained a discharge under 11 U.S.C. § 1328(a) and her lender did not foreclose on her condominium unit until 2015. Appendix A at 5a. The bankruptcy court had subject matter and personal jurisdiction under 28 U.S.C. §§ 157(a), 157(b)(2)(I), & 1334(b).

The Debtor owned a condominium unit in Washington state at Sixty-01 Condominiums (the "Property") that is subject to a set of covenants running with the land. Appendix A at 3a. Those covenants impose personal liability upon whoever owns the property on the date an

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2. *Restatement (Third) of Property: Servitudes § 1.1*, Comment A provides a meaningful definition of "community association" or "common-interest community":

> The distinctive feature of a common-interest community is the obligation that binds the owners of individual lots or units to contribute to the support of common property, or other facilities, or to support the activities of an association, whether or not the owner uses the common property or facilities, or agrees to join the association. Most common-interest communities are created by a declaration, which not only imposes the servitudes, but also provides automatic and mandatory membership in an association of property owners.

assessment is levied. *Id*. Several bodies of law under the state of Washington also impose the same liability. Revised Code of Washington ("RCW") 64.32.200 & 64.34.364.

Petitioner Sixty-01 Association of Apartment Owners (the "Association") is responsible for the operation of Sixty-01 Condominiums, a community association of nearly 800 condominium units. During her ownership of the Property, the Debtor enjoyed all the rights and privileges provided to all owners of Sixty-01 Condominiums, including but not limited to maintenance of the condominium structures and common elements, insurance, landscaping, utilities, and other benefits common to community associations. These rights and privileges, along with their associated costs, continued regardless whether the Debtor occupied the Property.

Generally speaking, a community association has no right to collect assessments unless an individual owns property within the association on the date an assessment is levied. *See, e.g.*, RCW 64.34.364(12) (imposing personal liability on an owner "of the unit to which the same are assessed as of the time the assessment is due"). Most states hold that such assessment obligations are part of the covenant even though they are for money rather than a more traditional property interest that obviously "touches and concerns the land" such as a view restriction or shared use. *See, e.g., Rodruck v. San Point Maint. Comm'n*, 295 P.2d 714, 721 (Wash. 1956) (analyzing older case law in other states to hold, for the first time in Washington state, that the obligation to pay community association assessments is a covenant).

It is also common for community associations to be able to impose monetary assessments on owners to enforce any violation of the association's governing documents (*see, e.g.*, RCW 64.32.060) and to recover for misconduct or negligence by an owner that costs the association money (*see, e.g.*, RCW 64.90.480(6)). The current status of the law allows debtors to escape any such personal liability so long as one can tie it back to the language of the covenant running with the land, which, according to the Ninth Circuit, serves as the basis for a pre-petition relationship between the parties.

The practical consequences of the Ninth Circuit's decision are far-reaching. The discharge under 11 U.S.C. § 1328(a) as interpreted applies not only to debtors who are delinquent when they file a Chapter 13 bankruptcy and "surrender" their real property to their secured creditors pursuant to 11 U.S.C. § 1325(a)(5)(C), but also to debtors who are current on their assessments on the date that they file. A debtor need only give notice to the community association that it has a "contingent" debt and in exchange will receive a discharge to any future assessments that come due. This is a curious result since the association will be providing new and ongoing consideration yet will be powerless to take any enforcement action until there is an actual delinquency. *See, e.g.*, RCW 64.32.364(1), (12) (providing for lien rights and personal liability of assessment debt only at the "time the assessment is due"). To the extent an association has an ability to foreclose the property when assessments are not paid, that can be a hollow remedy, especially in tough economic times. *See, e.g., Beeter v. Tri-City Prop. Mgmt. Servs. (In re Beeter)*, 173 B.R. 108, 117, n.8 (Bankr. W.D. Tex. 1994) (analyzing how the remedies available to an association where

the property lacks significant equity are illusory since mortgagee's typically hold senior lien rights to association assessment liens).

Hence, debtors now have a choice to escape liability of a large special assessment for repairs levied by an association many years after the owners file for bankruptcy, even though they did not owe anything at the time they filed and despite continuing to reap the benefits of community living. Associations – many of which are composed of a small handful of individuals with limited means – are now at risk of violating the discharge injunction under 11 U.S.C. § 524 if they do not take care to provide disclaimer language on statements sent to owners about the possible effect of a Chapter 13 discharge. It also exposes managing agents of associations to significant liability under the Fair Debt Collection Practices Act ("FDCPA") if they attempt to collect future assessment debts discharged in a Chapter 13 bankruptcy filed decades earlier. 15 U.S.C. § 1692, *et seq.*; *see, e.g., Garfield v. Ocwen Loan Servicing, LLC*, 811 F.3d 86 (2d Cir. 2016) (permitting an FDCPA claim against a lender's managing agent where the mortgage was discharged in a Chapter 13 bankruptcy, but the debtor continued to make monthly "ride-through" payments).

c. Reasons Why Review Should Be Granted

i. There Is a Split of Authority as to Whether Post-Petition Assessments are Discharged under 11 U.S.C. § 1328(a)

After a period of three to five years of debt repayment, the typical Chapter 13 debtor receives a "discharge of

all *debts* provided for by the plan or disallowed under section 502 of this title, except…" for an enumerated list of exceptions in the Bankruptcy Code. 11 U.S.C. § 1328(a) (emphasis added). Section 524(a) of the Bankruptcy Code elaborates how a bankruptcy discharge extends only to pre-petition, personal liability, which explains why the typical secured creditor can foreclose on their collateral notwithstanding a discharge. 11 U.S.C. § 524(a); *see also Johnson v. Homestate Bank*, 501 U.S. 78, 82-83 (1991).

The Bankruptcy Code defines a "debt" as a "liability on a claim". 11 U.S.C. § 101(12). "Liability" is not defined, but a "claim" is either a:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

Courts throughout the country have for decades struggled to interpret this provision as it pertains to post-petition community association assessments. The Ninth Circuit succinctly summarized the status of relevant appellate court decisions. Appendix A at 6-7a. While the

Ninth Circuit is the first circuit to issue a decision in the Chapter 13 context, the Fourth and Seventh Circuits issued opinions in the 1990's regarding post-petition assessments under Chapter 7's discharge provision, 11 U.S.C. § 727. *In re Rosenfeld*, 23 F.3d 833 (4th Cir. 1994) (holding that the personal obligation to pay assessments is part of the association's covenant running with the land that arose each month the debtor continued to own the property post-petition); *In re Rosteck*, 899 F.2d 694 (7th Cir. 1990) (holding that post-petition assessments in a Chapter 7 bankruptcy are discharged as part of a contractual, "contingent" or "unmatured" claim that arose pre-petition). The rationale set forth in *Rosenfeld* has been adopted by the majority of district and bankruptcy courts as it pertains to discharge of post-petition assessments under Chapter 13. Brandt H. Stitzer, *HOA Fees: A BAPCPA Death-Trap*, 70 Wash. & Lee L. Rev. 1395, 1410 (2013) (stating that a "strong majority of courts" hold that post-petition assessments are non-dischargeable). The reasoning set forth in the Fourth and Seventh Circuits are relevant for the issue under Chapter 13 bankruptcies and have been relied on extensively by the bankruptcy and district courts.

The majority approach makes sense because of how "[p]roperty interests are created and defined by state law" which are not to be disturbed absent "actual conflict" with the Bankruptcy Code. *Butner v. United States*, 440 U.S. 48, 55 & fn.9 (1979); *see also Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (stating that property interests are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law"). A community association's property interest is unique; its ability to levy assessments

on an ongoing basis is "*[t]he* distinctive feature" that it has. *Restatement (Third) of Property: Servitudes § 1.1*, cmt A (emphasis added). Compare this with a bank issuing a mortgage loan, the essence of which is the bank's right to insist upon full payment before giving up its security interest. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 580 (1935).

"'Homeowners association assessments are a square real-estate 'peg' that sensibly should not be 'forced' into the 'round hole' of the law of contracts.'" *In re Rivera*, 256 B.R. 828, 834 (Bankr. M.D. Fla. 2000) (citation omitted). For one, community associations are rare creditors in that they are not in the business of lending money or voluntarily extending credit. They are not selling a product, receiving interest on loans, or marketing themselves as a business that would entice the ordinary debtor into contracting with them. Instead, their status as creditor arises only as a byproduct of a modern, shared living arrangement, as evidenced by the way a debtor becomes bound to a community association—by way of a deed.[3] An association becomes a creditor (in the sense of extending credit for services rendered) only when assessments are not paid by an owner who chooses to remain on title. It is up to an owner to divest herself of her property interest within a community association.

Perhaps more important is the fact that a community association cannot simply stop providing services because

3. *See Restatement (Third) of Property, Servitudes* § 2.1 cmt A (noting how some commentators erroneously consider covenants to be modern contracts when, in fact, "covenants expressed in deeds are effective").

a few owners file for bankruptcy. In this respect, the Ninth Circuit's ruling seems to force associations into providing new and ongoing services to debtors unlike any other creditor affected by the Bankruptcy Code. Community associations in the western U.S. have effectively become hostages when an owner obtains a discharge under 11 U.S.C. § 1328(a) by being strong-armed to deliver continuing services with little hope or power to be fairly compensated. Contrast this with a traditional mortgage lender, for instance, where all the consideration from the creditor is provided upfront, affording the bank with the knowledge on how to protect itself with additional security as it may deem fit.

Not so with community associations, which may have to levy a $100,000.00-per-condominium-unit special assessment to reclad the building's siding five years after a debtor receives a Chapter 13 discharge. Disturbingly, the Ninth Circuit now allows such a debtor to not pay this assessment so long as the association was listed in the bankruptcy – even if the debtor did not owe anything at the time she filed her bankruptcy petition. This Court has cautioned of interpretations that transform the Bankruptcy Code's "fresh start" into a "free pass". *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014).

In response to *Rosteck*[4] which held that post-petition assessments are dischargeable debt arising from a pre-petition contract, Congress amended the Bankruptcy

4. But probably not *Rosenfeld*. *See Foster v. Double R Ranch Ass'n (In re Foster)*, 435 B.R. 650, 660 (B.A.P. 9th Cir. 2010) (questioning whether Congress was aware of *Rosenfeld* at the time it was drafting the original 11 U.S.C. § 523(a)(16) in 1994.

Code in 1994 and again in 2005 to bolster the protections afforded to community associations and without disturbing the holdings of *Rosenfeld's* progeny which have applied the Fourth Circuit's reasonings to the standard Chapter 13 discharge. 11 U.S.C. § 523(a)(16) (providing an express exception from discharge post-petition assessments in most but not all bankruptcy chapters). Despite a plethora of courts trying to resolve the status of the law with respect to Chapter 13 discharges under 11 U.S.C. § 1328(a), Congress did not address the issue in its 2005 amendment to the Bankruptcy Code ("BAPCPA").

Given the split of authority that existed in 2005, the Association asserts that this amounts to congressional acquiescence since some states interpret the obligation to pay assessments as merely contractual in nature while most view it as arising from a covenant and ownership. *Compare Foster*, 435 B.R. at 660 (stating that a Washington state "debtor's obligation to pay the HOA dues was a function of owning the land with which the covenant runs and not from a prepetition contractual obligation.") *with Rosteck*, 899 F.2d at 696 (interpreting Illinois law to find that condominium declarations are mere contracts, justifying the dischargeability of all post-petition assessments). In *Flood v. Kuhn*, this Court stated:

> We continue to be loath . . . to overturn those cases judicially when Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has clearly evinced a desire not to disapprove them legislatively.").

407 U.S. 258, 283–84 (1972).

This concern of acquiescence is at odds with the Ninth Circuit's assertion that Congress' silence served as its intent to not extend an exception from discharge to Chapter 13 debtors. Appendix A at 11-13a. This Court's review is needed to correct the Circuit's application of the frail *expressio unius est exclusion alterius* tool used to interpret the Bankruptcy Code. Appendix A at 12a; *see also Butner v. United States*, 440 U.S. 48, 55 (1979) (noting how the Bankruptcy Code permits different results in different states where property interests are at stake); William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy*, 824 (3d. ed. 2001) (questioning the interpretive value of *expressio unius* since it assumes that Congress was acting "carefully, considering every possible variation" when adopting the legislation). This is especially true considering the majority of courts treating post-petition assessments as non-dischargeable, future debt. This Court "'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure'". *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998) (quoting *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 563 (1990)).

In sum, review is appropriate to adjudicate why the Ninth Circuit's deviation from the majority approach is justified in light of state laws that treat the post-petition assessments as a property interest as well as decades of congressional acquiescence.

ii. The Circuit Courts Have Struggled to Define "Contingent" or "Unmatured" Debt and in the Process Have Disturbed Basic Precepts of Federalism

Returning to the definition of what constitutes a contingent or unmatured debt, the Ninth Circuit has a lengthy history of discounting state law in determining *when* a claim arises. *In re SNTL Corp.*, 571 F.3d 826, 839 (9th Cir. 2009) (concluding, after referring to other Ninth Circuit decisions that rely on a treatise for its authority, that "federal law determines *when* a claim arises under the Bankruptcy Code."). That court looked solely to a test developed by the Ninth Circuit called the "fair contemplation test". Appendix A at 9-10a. The test provides that "'a claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law.'" *Id.* (citations omitted).

The Ninth Circuit failed to take into account in any manner the way in which Washington state treats assessments that have not yet been assessed. This Court has stated concerns of federalism in defining what constitutes a debt and claim.

> Indeed, we have long recognized that the "'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having 'generally left the determination of property rights in the assets of a bankrupt's estate to state law.'"

Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 450-51 (2007) (quoting *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000). The Court has indicated that federal courts must look to state law in determining the temporal aspect of a "claim".

> What claims of creditors are valid and subsisting obligations against the bankrupt *at the time* a petition in bankruptcy is filed is a question which, in the absence of overruling federal law, is to be determined by reference to state law.

Vanston Bondholders Protective Comm. v. Green, 329 U.S. 156, 161 (1946) (emphasis added). While it is true that the definition of a "claim" under the current Bankruptcy Code (enacted in 1978) has broadened since *Vanston* to include "contingent" and "unmatured" claims, this expansion is not endless, and subsisting precedent by the Court shows that state law must be consulted. In this respect, the Ninth Circuit erred by unreflectively applying its "fair contemplation test". *See Fogel v. Zell*, 221 F.3d 955, 962 (7th Cir. 2000) (doubting that the issue of "contingent" claims is one that can be reduced to formula); *Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 532 (9th Cir. 1998) (warning of interpreting the broad definition of claim in an "unreflective way"); *Beeter*, 173 B.R. at 120 (noting how, "while the language and the intended direction of the Code's definition of 'claims' is clear, we know not how far to travel."); *In re Chateaugay Corp.*, 944 F.2d 997, 1003 (2d Cir. 1991) (expressing the same concerns).

Washington state, like many others, holds that the obligation to pay post-petition assessments arises not from a pre-petition contractual relationship, but from continued

ownership of the property after the filing of a bankruptcy. *See In re Foster*, 435 B.R. at 659-661 (noting how, per state law, liability for post-petition assessments is "not 'rooted in the pre-bankruptcy past', but rather [is] rooted in the estate in property itself." (citations omitted)). While this does not necessarily mean that Congress could not have drafted the Bankruptcy Code in a manner to discharge post-petition assessments, this Court made it clear in *Butner* that to do so, there must be an "actual conflict" (as opposed to implied or intentional). *Butner*, 440 U.S. at 55. Hence, while pre-petition assessments are clearly discharged as debts that are present and existing under state law, that is not the case for post-petition debts when all that is in the Bankruptcy Code are the undefined terms of "contingent" and "unmatured."

Great care must be taken when state law dictates that the personal liability arises in the future by way of a property right – the continued ownership of the real property that is solely in control of the debtor. After all, applying "contingent" and "unmatured" without reflection could discharge every claim in the future. The Ninth Circuit and other courts have partly tried to address this issue by adding a requirement that the "contingent" event be "extrinsic" in nature. *Camelback Constr. v. Castellino Villas, A.K.F. LLC (In re Castellino Villas, A.K.F. LLC)*, 836 F.3d 1028, 1033 (9th Cir. 2016) (defining a "contingent" claim as one where "'the debtor will be called upon to pay [it] only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.'" (citation omitted)). Had this definition been used here, post-petition assessments would not be dischargeable since it is the debtor's decision to stay on title that results in personal liability. *See, e.g., In re Spencer*, 457 B.R. 601, 607 (E.D. Mich. 2011).

Review by this Court is needed to protect precepts of federalism. Lower courts must take into account state law in determining what constitutes a "contingent" or "unmatured" claim to preclude future claims from being unfairly discharged.

iii. The Ninth Circuit Erred in Abrogating a Property Interest Protected by the Fifth Amendment

Not only has this Court expressed reservations under the federalism doctrine when abrogating a property interest, it has also articulated Fifth Amendment concerns via the Takings and Due Process Clauses. While the Ninth Circuit identified the general *modus operandi* of the Bankruptcy Code in that it discharges *in personam* liability leaving the Association with only its foreclosure rights (Appendix A at 14a), it completely glossed over how the property interest at issue is defined by state law – it is the Association's property right to be paid assessments by whoever happens to own the real property at the time an assessment is levied. This arose not by a contract (which can no doubt be impaired by Congress), but by a covenant running with the land.

As previously discussed, state laws have recognized that community associations have a monetary right to be paid assessments which is a property interest arising out of the recorded covenant running with the land. This Court has identified non-contractual, monetary property interests before. *See, e.g.*, *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 159 (1998) (holding that interest earned on client funds held in lawyer IOLTA accounts is the "private property" of the client for Takings Clause purposes). As such, a Takings Clause analysis is necessary.

Compounding this concern is *Butner's* requirement that an "actual conflict" exist for a property interest to be disturbed in the bankruptcy context. 440 U.S. at 55 & fn.9. With pre-petition assessments, there is certainly an "actual conflict" with a clear right to payment, but not so for post-petition assessments under the "contingent" and "unmatured" portion of 11 U.S.C. § 101(12). Moreover, "[n]o bankruptcy law shall be construed to eliminate property rights which existed before the law was enacted in the absence of an explicit command from Congress." *United States v. Sec. Indus. Bank*, 459 U.S. 70, 81 (1982). The current Bankruptcy Code was adopted in 1978 and for the first time included the "contingent" and "unmatured" definition of a debt at issue here. However, Washington and other states recognized the right to payment of assessments as a property interest arising from covenants running with the land decades earlier. *Rodruck*, 295 P.2d at 721. Whereas it may be fairly easy to afford a community association "just compensation" (as may be abrogated under the laws of bankruptcy) for pre-petition assessments since those are easy to compute when a community association files its proof of claim pursuant to 11 U.S.C. §§ 501-511, it is nigh impossible to do so for post-petition assessments since they depend on how long the debtor will continue to remain on title. *Beeter*, 173 B.R. at 116 n.7. (noting how a court would need "Avalonian powers" to speculate how long a debtor might own a home within a community association).

This brings us to the substantive due process portion of the Fifth Amendment, which requires a meaningful opportunity to be heard before disposing of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (stating that the "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time

and in a meaningful manner.'") (citations omitted). "The constitutional right to due process must guide courts in determining whether a potential right constitutes a contingent claim that is discharged in bankruptcy." *Conseco, Inc. v. Schwartz (In re Conseco, Inc.)*, 330 B.R. 673, 685 (Bankr. N.D. Ill. 2005) (citing *Hexcel Corp. v. Stepan Co. (In re Hexcel Corp.)*, 239 B.R. 564, 567 (Bankr. N.D. Cal. 1999)). The concern in *Conseco* appeared to be the loss of a right to collect a future claim so distant in the future that the creditor would not have had a meaningful opportunity to dispute the claim or present evidence as to the amount of the claim. *Id*.

While most creditors holding contingent claims can file a proof of claim and present reasonable evidence to establish its value pursuant to 11 U.S.C. § 502(b), such a hearing for community associations has little meaning given the significant variables that comprise future assessment debt. Those variables include (1) the length of time the debtor owns the real property, (2) the maintenance needs of the community, (3) the debtor's unilateral decision to pay or not pay, (4) the association's financial status at the time the debtor files for bankruptcy, (5) the number of other owners who fail to pay assessments, and (6) the debtor's decision to engage in negligent or criminal conduct that costs the association money.

To summarize, the Ninth Circuit's failure to analyze the Fifth Amendment is not consistent with this Court's precedent. The discharge of post-petition assessments deprives community associations of a property interest fundamental to their existence and does not provide any meaningful opportunity to be heard or compensated on debts that might not arise for decades. It is not a creditor

doing business for profit that is harmed, but a debtor's neighbors who must now pay her share until she decides to divest herself of ownership.

iv. The Doctrine of Ripeness Is Frustrated If Post-Petition Assessments Are Dischargeable

In addition to the Fifth Amendment concerns set forth above, adjudicating the value of a community association's claim for post-petition assessments violates the doctrine of ripeness. While the Bankruptcy Code does grant the courts the authority to estimate claims that are "contingent" or "unliquidated", it also limits the life of a Chapter 13 bankruptcy to a maximum of 60 months. The variables involved in estimating the amount of a community association's claim are far too complex and speculative for such a "debt" to be an actual case or controversy before the end of the bankruptcy.

Ripeness is a "justiciability doctrine designed 'to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements.'" *Cassim v. Educ. Credit Mgmt. (In re Cassim)*, 594 F.3d 432, 437 (6th Cir. 2010) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985)). Ripeness draws from both Article III limitations as well as prudential reasons for refusing jurisdiction. *Reno v. Catholic Soc. Servs.*, 509 U.S. 43, 57 n.18 (1993) (citations omitted) (addressing a ripeness issue *sua sponte* and for the first time).

Although there are few decisions even by the courts of appeals involving ripeness in the bankruptcy context, this Court has held that "[p]roblems of prematurity and

abstractness may well present 'insuperable obstacles' to the exercise of the Court's jurisdiction, even though that jurisdiction is technically present." *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588 (1972) (citations omitted). While it may be simple enough for bankruptcy courts to reasonably estimate most "contingent" and "unliquidated" claims under 11 U.S.C. § 502(c), such cannot be said for post-petition assessments when, as discussed above, the length of ownership and amount of assessments can vary wildly, usually based on the actions of the debtor.

As such, post-petition assessments present an "insuperable obstacle" in cases where ownership has not been divested prior to confirmation of the Chapter 13 plan. The amount to which creditors are entitled to recover from a bankrupt's estate depends on the total amount of claims filed. 11 U.S.C. §§ 1322 & 1325 (providing for a hierarchy of payments to creditors based on the types and amounts of claims filed). Yet, the life of a Chapter 13 bankruptcy must never extend beyond 60 months. 11 U.S.C. § 1325(b)(4). As already discussed, neither the courts nor community associations have meaningful control over when a debtor will divest herself of ownership, so bankruptcy judges will have to hazard a guess as to the value of an association's claim to keep the bankruptcy moving. *See Beeter*, 173 B.R. at 116 n.7. Hence, if post-petition assessments are dischargeable, the lower courts are left to crystal balls to value claims for post-petition assessments (creating a due process issue), or to holding that the claim is not yet ripe for estimation and might not become ripe until long after the bankruptcy is concluded. This would appear to frustrate the purpose of the Bankruptcy Code and the rights of all the parties subject thereto.

As this Court has stated, "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law". *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 192 (1902). Because the doctrine of ripeness cannot be reconciled when post-petition assessments are treated as "contingent" debts, review is needed to ensure courts do not interpret the Bankruptcy Code in a manner that violates the Constitution.

v. Even If this Court Were to Uphold the Ninth Circuit's Decision, a Ruling from this Court Will Alert Congress to a Deficiency in the Bankruptcy Code

The Ninth Circuit relied extensively on this Court's decision in *Davenport* for the position that Congress made a policy decision to adopt an extremely broad definition of debt with limited exceptions thereto and it is up to Congress to amend the Bankruptcy Code if warranted. Appendix A at 12a, 13a, & 15a. Congress overturned *Davenport* shortly after the Court held that criminal restitution orders were not excepted from discharge. *Criminal Victims Protection Act of 1990*, Pub. L. 101-581, § 3, 104 Stat. 2865 (codified as 11 U.S.C. § 1328(a)(3)). This may give pause for this Court to continue applying the rationale set forth in *Davenport* regarding the scope of the term "debt".

> We have overruled our precedents when the intervening development of the law has 'removed or weakened the conceptual underpinnings from the prior decision, or where the later law has rendered the decision irreconcilable with competing legal doctrines or policies.'

Neal v. United States, 516 U.S. 284, 295 (1996) (citations omitted). Even if not, the fact that Congress reacted in the very same year to rectify the *Davenport* decision shows that Congress is willing to amend the Bankruptcy Code when equity so demands. The Association requests the Court to accept certiorari to, at the very least, notify Congress that courts are interpreting the Bankruptcy Code in a manner that is clearly unfair to community associations and the 70 million Americans who reside in them.

V. CONCLUSION

For all the above reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted this 5th day of October, 2018.

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 10, 2018

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-35384

PENNY D. GOUDELOCK,

Appellant,

v.

SIXTY-01 ASSOCIATION OF
APARTMENT OWNERS,

Appellee.

February 6, 2018, Argued and Submitted,
Seattle, Washington
July 10, 2018, Filed

Appeal from the United States District Court for the Western District of Washington. Marsha J. Pechman, Senior District Judge, Presiding.

Before: Milan D. Smith, Jr. and Mary H. Murguia, Circuit Judges, and Eduardo C. Robreno,* District Judge. Opinion by Judge Robreno.

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* The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Appendix A

SUMMARY**

Bankruptcy

The panel reversed the district court's decision affirming the bankruptcy court's summary judgment in favor of a condominium association, which sought in an adversary proceeding to determine the dischargeability of a debtor's personal obligation to pay condominium association assessments that accrued between the date the debtor filed her Chapter 13 bankruptcy petition and the date the condominium unit was foreclosed upon.

Agreeing with the reasoning of the Seventh Circuit in a Chapter 7 case, the panel held that condominium association assessments that become due after a debtor has filed for bankruptcy under Chapter 13 are dischargeable under 11 U.S.C. § 1328(a). The panel concluded that the debt arose prepetition and was not among exceptions listed in § 1328(a). The panel held that the Takings Clause was not implicated because the condominium association retained its in rem interest. The panel also concluded that equitable arguments did not override the express provisions of the Bankruptcy Code.

OPINION

ROBRENO, District Judge:

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Appendix A

Appellant Penny Goudelock appeals the district court's affirmance of the bankruptcy court's grant of summary judgment in favor of appellee, Sixty-01 Association of Apartment Owners ("Sixty-01"). The issue is whether condominium association ("CA") assessments that become due after a debtor has filed for bankruptcy under Chapter 13 of the Bankruptcy Code are discharged upon confirmation of the plan. We have jurisdiction pursuant to 28 U.S.C. § 158(d)(1). We conclude that such assessments are dischargeable under 11 U.S.C. § 1328(a) and, accordingly, reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts are not in dispute. Goudelock purchased a condominium unit in Redmond, Washington in 2001. Her deed was subject to a declaration of covenants and restrictions (the "Declaration") that was recorded against the property in 1978. The Declaration provides that Sixty-01, a CA, may charge property owners assessments for monthly fees and for maintenance, repairs, and capital improvements.

The Declaration grants Sixty-01 two methods for collecting unpaid assessments. It provides that all unpaid assessments: (1) constitute a lien on the condominium unit, enforceable through foreclosure; and (2) create a personal obligation through which Sixty-01 can bring suit for damages against the owner of the condominium unit.[1]

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1. This is consistent with the applicable Washington law. In Washington, condominiums formed before 1990 are subject to the

Goudelock stopped paying the CA assessments in 2009 and Sixty-01 sought to enforce its lien by initiating foreclosure proceedings in state court. Goudelock moved out of her condominium unit and, in March of 2011, filed for bankruptcy under Chapter 13. As part of her Chapter 13 plan, Goudelock surrendered the condominium unit. Sixty-01 filed a proof of claim attesting to $18,780.39 in unpaid CA assessments and noted that they continued to accrue at a monthly rate of $388.46. Before the plan was

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Horizontal Property Regimes Act ("HPRA"), codified at RCW § 64.32. Condominiums formed *after* July 1, 1990, are subject to the Washington Condominium Act ("WCA"), codified at RCW § 64.34, which was modeled after the Uniform Condominium Act. However, certain provisions of the newer WCA apply to pre-1990 condominiums. As relevant here, the WCA specifies that its provision governing a lien for assessments, RCW § 64.34.364, applies to pre-1990 condominiums "with respect to events and circumstances occurring after July 1, 1990," though it does not "invalidate or supersede existing, inconsistent provisions of the declaration." RCW § 64.34.010. Because Goudelock acquired her condominium in 2001, all events relating thereto necessarily occurred after July 1, 1990. Thus, to the extent that it is consistent with the Declaration, RCW § 64.34 defines the contours of the lien arising from Goudelock's unpaid assessments. Here, the Declaration and the WCA are consistent. Like the Declaration, the WCA establishes that an association "has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due." RCW § 64.34.364(1). The WCA also provides that "[i]n addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due." RCW § 64.34.364(12). An association may bring a "[s]uit to recover a personal judgment for any delinquent assessment . . . in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums." *Id.*

confirmed by the bankruptcy court, Sixty-01 canceled the foreclosure sale because the mortgage lender paid the outstanding assessments. The condominium unit sat unoccupied until February 26, 2015, when the mortgage lender foreclosed on it. On July 24, 2015, Goudelock completed her plan obligations and received a discharge pursuant to 11 U.S.C. § 1328(a).

Meanwhile, in April of 2015, Sixty-01 had brought suit in the United States Bankruptcy Court for the Western District of Washington to determine the dischargeability of Goudelock's personal obligation to pay the post-petition CA assessments that had accrued between March 2011 (when Goudelock filed her Chapter 13 petition) and February 2015 (when the condominium unit was foreclosed upon). The bankruptcy court granted summary judgment in Sixty-01's favor, concluding that the post-petition CA assessments "were not dischargeable because they arose at the time of their assessment and were an incidence of legal ownership of the burdened property." *Goudelock v. Sixty-01 Ass'n of Apartment Owners*, No. C15-1413-MJP, 2016 U.S. Dist. LEXIS 46796, 2016 WL 1365942, at *1 (W.D. Wash. Apr. 6, 2016) (summarizing the bankruptcy court's holding). The court rejected Goudelock's argument that the personal obligation to pay CA assessments was a pre-petition debt under 11 U.S.C. § 1328(a) that arose when she initially purchased the condominium unit. *Id.*

Goudelock appealed, and the district court affirmed the bankruptcy court's grant of summary judgment. 2016 U.S. Dist. LEXIS 46796, [WL] at 2. Goudelock then filed a timely appeal in this court.

II. STANDARD OF REVIEW

"This court reviews de novo a district court's decision on appeal from a bankruptcy court" as well as "[t]he bankruptcy court's conclusions of law and interpretation of the Bankruptcy Code." *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009).

III. ANALYSIS

No circuit court of appeals has addressed the dischargeability of CA assessments that have become due after the filing of a Chapter 13 petition. There are, however, two appellate decisions addressing the dischargeability of similar post-petition assessments under Chapter 7. Moreover, a number of lower courts have imported the teachings of these two appellate decisions under Chapter 7 to the dischargeability of post-petition association assessments under Chapter 13. The two appellate decisions (and their progeny) represent polar opposite positions and their applicability to Chapter 13 cases is the starting point of our analysis.

First, in *Matter of Rosteck*, 899 F.2d 694 (7th Cir. 1990), the Seventh Circuit Court of Appeals found that the obligation to pay CA assessments was an unmatured contingent debt under the Bankruptcy Code that arose pre-petition (when the debtors purchased the property) and that merely became mature when the assessments became due post-petition. *Id.* at 696-97. As a result, the debt for future assessments was dischargeable, which the court held was "consistent with the Bankruptcy Code's goal of providing debtors a fresh start." *Id.* at 697.

A contrasting view was articulated in *In re Rosenfeld*, 23 F.3d 833 (4th Cir. 1994), wherein the Fourth Circuit Court of Appeals held that the obligation to pay cooperative association assessments ran with the land and arose each month from the debtor's continued post-petition ownership of the property. *Id.* at 837. Thus, the court concluded that any assessments due and payable after the filing of the Chapter 7 petition were not dischargeable as they were not pre-petition debts. *Id.* at 838.[2]

Both lines of reasoning have been relied upon by lower courts in this circuit when considering the dischargeability of post-petition association assessments under Chapter 13, ultimately reaching competing results. *Compare In re Coonfield*, 517 B.R. 239, 243 (Bankr. E.D. Wash. 2014) (following *Rosteck*'s reasoning and concluding "that the claim against [the debtors] for association assessments arose pre-petition and includes obligations for ongoing assessments"), *with In re Foster*, 435 B.R. 650, 660-61 (B.A.P. 9th Cir. 2010) (applying *Rosenfeld*), *and In re Batali*, No. WW-14-1557-KiFJu, 2015 Bankr. LEXIS 4050, 2015 WL 7758330, at *8-9 (B.A.P. 9th Cir. 2015) (applying *Rosenfeld* and *Foster*).

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2. As noted above, *Rosteck* and *Rosenfeld* were both Chapter 7 cases. In 1994 Congress embraced *Rosenfeld* and rejected *Rosteck* by providing that post-petition assessments are not dischargeable under Chapter 7 per 11 U.S.C. § 523(a)(16). While Congress applied this exception from discharge to Chapter 7, 11, and 12 petitions, as well as Chapter 13 petitions where a debtor is discharged without completing her payments (under 11 U.S.C. § 1328(b)), Congress notably omitted the exception for Chapter 13 petitions where a discharge follows full payment under the plan (under 11 U.S.C. § 1328(a))—which is the posture of this case.

We agree with the reasoning of *Rosteck* and conclude that its teachings in the Chapter 7 context are applicable to Chapter 13 cases. Sixty-01 obtained two state law remedies under the Declaration to address the failure to pay CA assessments: an *in rem* remedy of a lien and right of foreclosure; and an *in personam* remedy allowing it to bring suit against the property owner. While the *in rem* lien is not dischargeable under Chapter 13, the pre-petition *in personam* obligation is. It is Goudelock's *in personam* obligation that ultimately is at issue in this case.

A. The Personal Obligation to Pay CA Assessments Is a Debt Under Section 1328(a)

A Chapter 13 discharge is intended to be a "discharge of all debts," barring a few enumerated exceptions. 11 U.S.C. § 1328(a). Bankruptcy proceedings are intended to grant debtors a "fresh start," *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991), and, as a result, the Bankruptcy Code "is to be construed liberally in favor of debtors," *In re Devers*, 759 F.2d 751, 754 (9th Cir. 1985). Moreover, in that Chapter 13 is the preferred route for personal bankruptcy, "[a] discharge under Chapter 13 'is broader than the discharge received in any other chapter.'" *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 268, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) (quoting 8 Collier on Bankruptcy ¶ 1328.01, p. 1328-5 (rev. 15th ed. 2008)).

The Bankruptcy Code defines "debt" as a "liability on a claim." 11 U.S.C § 101(12). In turn, 11 U.S.C. § 101(5)(A) defines a "claim," (and thus, a debt) as a

"right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."[3] This definition of a claim is very broad, encompassing all of a debtor's obligations "*no matter how remote or contingent*." *In re SNTL Corp.*, 571 F.3d 826, 838 (9th Cir. 2009) (quoting *In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993)); *see also, e.g., Rosteck*, 899 F.2d at 696; *In re Christian Life Ctr.*, 821 F.2d 1370, 1375 (9th Cir. 1987) (stating that Congress intended to provide "'the broadest possible definition' of claims so that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" (quoting S. Rep. No. 95-989, at 22 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5808)).

Thus, the obligation to pay CA assessments is a debt since it creates a right to payment. *See* 11 U.S.C. § 101(5)(A). The fact that the future assessments may be a contingent and unmatured form of the debt does not alter this analysis. *See, e.g., id.; SNTL Corp.*, 571 F.3d at 838.

B. The CA Assessment Debt Arose Pre-Petition and Is Dischargeable

Neither party disputes that only debts arising pre-petition may be discharged. Federal law determines when a claim arises under the Bankruptcy Code. *SNTL*

3. Section 101(5)(B) includes an additional definition of "claim" regarding the right to an equitable remedy. 11 U.S.C. §101(5)(B). However, that definition is not relevant here.

Corp., 571 F.3d at 839. In the Ninth Circuit, courts use the "fair contemplation" test to determine when a claim arises. *Id.* This test provides that "a claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law." *Id.* Sixty-01 does not contest seriously that Goudelock's *in personam* obligation meets the fair contemplation test. Here, at the time of the purchase of the condominium unit, Sixty-01 fairly could have contemplated that the monthly CA assessments would continue to accrue based upon Goudelock's continued ownership of the condominium unit. Thus, Goudelock's *in personam* obligation to pay CA assessments arose pre-petition when she purchased the condominium unit. *See Rosteck*, 899 F.2d at 696 (concluding that the debtors "had a debt for future condominium assessments when they filed their bankruptcy petition" in light of the pre-petition obligation in the declaration).

Before becoming due each month, the assessments, which are part of the pre-petition debt, are unmatured and are also contingent upon continued ownership of the property. Unmatured contingent debts are, however, dischargeable under Section 1328(a). 11 U.S.C. § 101(5)(A); *see Coonfield*, 517 B.R. at 242 (providing that a homeowners association "possesses its claim by virtue of [the debtors] acquiring title to the condominium and subsequent assessments are a consequence of, and mature from, the act that gave rise to such claim. Thus, absent the debtors' pre-petition act of taking title, the Homeowners Association would not have a claim").

In this case, Goudelock's personal obligation to pay CA assessments was not the result of a separate, post-petition transaction but was created when she took title to the condominium unit. As a result, the debt for the assessments arose pre-petition and is dischargeable under Section 1328(a), unless the Bankruptcy Code provides an exception to discharge.

C. The Personal Debt Arising from CA Assessments Is Not Excepted from Discharge under Section 1328(a)

Subsections 1328(a)(1)-(4) enumerate the only exceptions to the broad discharge of debts under Section 1328(a).[4] In addition, under 11 U.S.C. § 523(a)(16), post-

4. The exceptions to Section 1328(a) discharge are debts regarding: (1) curing defaults on unsecured claims or secured claims which require payments due after the last payment under the plan is due (under 11 U.S.C. § 1322(b)(5)); (2) required taxes for which the debtor is liable (under 11 U.S.C. § 507(a)(8)(C)); (3) taxes owed under unfiled or late tax returns (under 11 U.S.C. § 523(a)(1)(B)); (4) taxes from fraudulent tax returns or tax evasion (under 11 U.S.C. § 523(a)(1)(C)); (5) valuables obtained by fraud or false pretenses (under 11 U.S.C. § 523(a)(2)); (6) unscheduled debts (under 11 U.S.C. § 523(a)(3)); (7) fraud or defalcation while acting as a fiduciary, embezzlement, or larceny (under 11 U.S.C. § 523(a)(4)); (8) domestic support obligations (under 11 U.S.C. § 523(a)(5)); (9) student loans (under 11 U.S.C. § 523(a)(8)); (10) obligations for personal injuries resulting from a DUI (under 11 U.S.C. § 523(a)(9)); (11) restitution and fines arising from a criminal conviction; and (12) damages awarded in personal injury actions resulting from willful or malicious injury. The parties agree that none of these exceptions are implicated here.

petition association assessments are excepted from discharge for petitions under Sections 727 (Chapter 7), 1141 (Chapter 11), 1228(a) and (b) (Chapter 12), and Section 1328(b) (Chapter 13 cases where the debtor is discharged without completing her payments).[5] Notably absent from the list of discharge exceptions in Section 1328(a) is a reference to Section 523(a)(16), the only provision which excepts post-petition association assessments from discharge. *See* n.5 *supra*.

Thus, it appears that Congress' decision not to add post-petition association assessments to the exceptions listed in Section 1328(a) was purposeful. *See Boudette v. Barnette*, 923 F.2d 754, 756-57 (9th Cir. 1991) (describing the rule of statutory interpretation of *expressio unius est exclusio alterius* as creating "a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions"); *see also Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 563, 110 S. Ct. 2126, 109 L. Ed. 2d 588 (1990) ("Congress secured a broader discharge for debtors under Chapter 13 than Chapter 7 by extending to Chapter 13 proceedings some, but not all, of § 523(a)'s

5. As stated, Congress added this exception to resolve the split between the Fourth and Seventh Circuits in *Rosenfeld*, 23 F.3d 833, and *Rosteck*, 899 F.2d 694 regarding post-petition association assessments in Chapter 7 cases. Congress recognized in the legislative history of Section 523(a)(16) that "[e]xcept to the extent that the debt is nondischargeable under [Section 523(a)], obligations to pay such fees [(post-petition assessments)] would be dischargeable." 140 Cong. Rec. H10752-01, H10770 § 309 (citing *Rosteck*, 899 F.2d 694).

exceptions to discharge."), *superseded by statute*, Criminal Victims Protection Act of 1990, PL 101-581, § 3, 104 Stat. 2865; *In re Riso*, 978 F.2d 1151, 1154 (9th Cir. 1992) ("In order to effectuate the fresh start policy [of bankruptcy], exceptions to discharge should be strictly construed against an objecting creditor and in favor of the debtor.").

Sixty-01 cautions against giving undue weight to "Congress' silence" regarding its failure to include post-petition CA assessments as an exception to discharge under Section 1328(a), citing *Foster*. The court in *Foster* wondered whether the failure to include this exception was simply the result of a "statutory misstep." 435 B.R. at 659. We reject this conjecture. This is not a case implicating a drafting error or a Congressional oversight. Rather, it is an instance where Congress confronted an issue of policy, and spoke by creating explicit exceptions to discharge in Section 1328(a) but did not include (as it did for other chapters) post-petition CA assessments. *See Boudette*, 923 F.2d at 756-57.

This very dilemma (whether Congress' exclusion of a discharge exception was an oversight or purposeful) was addressed by the Supreme Court in *Davenport*. In that case, the Court concluded that because Congress had not explicitly included the Chapter 7 discharge exception for fines, penalties and forfeitures (Section 523(a)(7)) in Chapter 13, and given Congress' broad definition of the term "debt," as well as the fact that Chapter 13 afforded a broader discharge than Chapter 7, criminal restitution orders were dischargeable under Chapter 13. *Davenport*,

495 U.S. at 562-64. Congress disagreed with the Court's decision and later overruled it by amending Section 1328(a) to specifically exclude criminal restitution from discharge. *See* PL 101-581, § 3, 104 Stat. 2865; 11 U.S.C. § 1328(a)(3). *Davenport* illustrates the proper interaction between Congress and the courts. As applied here, the Bankruptcy Code does not provide an exception to discharge under Section 1328(a) for post-petition association assessments (including CA assessments). If Congress concludes that such an exception is sound public policy, it may amend the Bankruptcy Code to provide for it as it did in response to *Davenport*.

D. The Takings Clause and Notions of Equity

The parties raise two additional arguments that warrant brief discussion.

First, Sixty-01 contends that, because it asserts that the personal obligation to pay CA assessments is a real property interest stemming from the Declaration, the Fifth Amendment's Takings Clause prohibits the government from discharging the obligation. The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. Sixty-01 argues just that—that the discharge of the post-petition CA assessments would amount to a taking of a substantial property right without just compensation.

This argument fails. In the bankruptcy context, the Supreme Court has distinguished between secured *in rem*

debts and unsecured *in personam* debts: *in personam* debts are dischargeable while the creditor retains its *in rem* property interests. *See Johnson v. Home State Bank*, 501 U.S. 78, 82-84, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991) (concluding that the debtor's *in personam* obligation under a mortgage, but not the *in rem* obligation, was discharged pursuant to a Chapter 7 petition and that, in addition, the remaining *in rem* property interest was a "claim" under the broad definition in the Bankruptcy Code subject to inclusion in a subsequent Chapter 13 reorganization plan); *id.* at 84 n.5 ("[A] discharge under the Code extinguishes the debtor's personal liability on his creditor's claims."); *see also In re Anderson*, 378 B.R. 296, 298 (Bankr. W.D. Wash. 2007) ("A bankruptcy discharge extinguishes only *in personam* claims against the debtor(s), but generally has no effect on an *in rem* claim against the debtor's property." (quoting *Cen-Pen Corp. v. Hanson*, 58 F.3d 89, 92 (4th Cir. 1995))). Because Sixty-01 retains its *in rem* interest (even after the discharge of Goudelock's *in personam* debt), the Takings Cause is not implicated.

Second, both parties raise equitable arguments regarding why post-petition CA assessments should or should not be discharged under certain circumstances. Many of these arguments turn on whether the debtor relinquishes his or her property or remains in possession of it post-petition. However, there is no legal basis for distinguishing between whether Goudelock retained possession of her condominium unit post-petition and, thus, continued to enjoy the benefit of occupancy at no cost, or, instead, surrendered it at some point. Sixty-01 points out that bankruptcy courts are "essentially courts

of equity," *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 57, 109 S. Ct. 2782, 106 L. Ed. 2d 26 (1989) (quoting *Katchen v. Landy*, 382 U.S. 323, 327, 86 S. Ct. 467, 15 L. Ed. 2d 391 (1966)), and argues that affording Goudelock what would essentially be "free rent" for four years is inequitable and unjust. However, notions of equity and fairness do not override the express provisions of the Bankruptcy Code. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S. Ct. 963, 99 L. Ed. 2d 169 (1988) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."). The legislative branch, not the courts, is the appropriate place to balance conflicting policy interests and adjust the Bankruptcy Code accordingly if it is warranted. *See Davenport*, 495 U.S. at 562-63 (recognizing that Congress makes "policy choice[s] regarding the dischargeability" of debts).

IV. CONCLUSION

For the foregoing reasons, we reverse the district court's affirmance of the bankruptcy court's grant of summary judgment in favor of Sixty-01 and remand for further proceedings consistent with this disposition.

REVERSED AND REMANDED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, FILED APRIL 6, 2016

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASE NO. C15-1413-MJP

PENNY D. GOUDELOCK,

Appellant,

v.

SIXTY-01 ASSOCIATION
OF APARTMENT OWNERS,

Appellee.

April 6, 2016, Decided
April 6, 2016, Filed

ORDER AFFIRMING BANKRUPTCY COURT

THIS MATTER comes before the Court on Debtor-Appellant Penny D. Goudelock's appeal of the bankruptcy court's grant of summary judgment in Appellee's favor. (Dkt. Nos. 1, 5.) Having considered the Parties' briefing and the related record, the Court AFFIRMS the bankruptcy court's determination.

Appendix B

BACKGROUND

This is an appeal of the bankruptcy court's order granting summary judgment in favor of Plaintiff-Appellee Sixty-01 Association of Apartment Owners in Adversary Proceeding No. 15-01093. (Dkt. Nos. 1, 2, 4.) Sixty-01 Association of Apartment Owners ("Sixty-01") brought the adversary proceeding to determine whether Ms. Goudelock's post-petition condominium association dues and assessments were dischargeable under 11 U.S.C. § 1328(a). The relevant factual background can be summarized as follows.

In 2001, Ms. Goudelock purchased a condominium subject to a declaration of covenants and restrictions (the "Declaration") recorded against the property in 1978, which provided for, inter alia, the creation of Sixty-01, a Washington non-profit condominium association existing under RCW 64.38. (Dkt. No. 5-1 at 52-54.) To fund Sixty-01's activities, the Declaration provided that Sixty-01 could charge each lot owner monthly dues as well as other assessments as needed for maintenance, repair, and capital improvements. (*Id.* at 60-127.) Additionally, the Declaration granted Sixty-01 a lien on each lot for unpaid assessments as well as costs and reasonable attorney's fees incurred in connection with the collection of any delinquent assessments. (*Id.*)

By 2009, Ms. Goudelock was not paying her dues and assessments, and Sixty-01 commenced foreclosure proceedings against Ms. Goudelock in King County Superior Court. (*Id.* at 48-50, 146-51, 164-65.) Ms.

Goudelock moved out of the property and, on March 11, 2011, filed for relief under Chapter 13 of the Bankruptcy Code. (*Id.*) Because Ms. Goudelock was no longer living in the condominium, she proposed an amended Chapter 13 plan in June 2011 that surrendered the property. (*Id.* at 167-70.) The proposed plan was confirmed by the bankruptcy court on October 3, 2011. (*Id.* at 157.)

Before the plan was confirmed by the court, Sixty-01 had obtained relief from the stay based on its intention to pursue its in rem foreclosure rights against the property alone. (*Id.* at 48-50.) However, Sixty-01 canceled the sheriff's sale in December of 2012 because the mortgage lenders paid all of Ms. Goudelock's outstanding dues and assessments. (*Id.*) The property then sat empty until February 26, 2015, when the successor in interest to Litton Loan Servicing foreclosed on the property. (*Id.* at 48-50, 56-57.) On July 24, 2015, Ms. Goudelock completed her plan obligations and received a Chapter 13 discharge. (*Id.* at 160-63.)

Relying principally on *In re Foster*, 435 B.R. 650 (B.A.P. 9th Cir. 2010), the bankruptcy court found that Ms. Goudelock's post-petition condominium association dues and assessments were not dischargeable because they arose at the time of their assessment and were an incidence of legal ownership of the burdened property, thus rejecting Ms. Goudelock's contention that the dues and assessments were pre-petition debts. (Dkt. No. 5-1 at 186-87,196-204.) Specifically, the bankruptcy court held that the discharge granted to Ms. Goudelock did not discharge the dues and assessments that accrued

between March 11, 2011, the date Ms. Goudelock filed her bankruptcy petition, and February 26, 2015, the date the lender foreclosed on the property. (*Id.*) Ms. Goudelock now appeals, arguing again that the post-petition dues and assessments arose out of a pre-petition agreement and are therefore "debts" dischargeable under 11 U.S.C. § 1328(a). (Dkt. No. 5 at 6.) Ms. Goudelock also argues that, to the extent the laws of Washington State prevent Ms. Goudelock from discharging the dues and assessments, those laws infringe on the "fresh start" to be provided to debtors under the Bankruptcy Code and are thus preempted by federal law. (*Id.*)

The Court now finds that Ms. Goudelock's post-petition condominium association dues and assessments are not dischargeable, and thus AFFIRMS the bankruptcy court's grant of summary judgment in Sixty-01's favor.

DISCUSSION

I. Legal Standard

A grant of summary judgment by the bankruptcy court is reviewed de novo. *In re Bullion Reserve of N. Am.*, 922 F.2d 544, 546 (9th Cir. 1991). "Where the facts in the record are not in significant dispute, our task is to determine whether a legal conclusion is contrary to law." *In re Bubble Up Delaware, Inc.*, 684 F.2d 1259, 1262 (9th Cir. 1982). The bankruptcy court's interpretation of the Bankruptcy Code is reviewed de novo. *In re Been*, 153 F.3d 1034, 1036 (9th Cir. 1998).

Appendix B

II. Dischargeability under § 1328(a)

The Court below relied on the Bankruptcy Appellate Panel of the Ninth Circuit's decision in *In re Foster*, 435 B.R. 650 (B.A.P. 9th Cir. 2010), to conclude that Ms. Goudelock's post-petition dues were not dischargeable. (Dkt. No. 5-1 at 186-87,196-204.) *Foster* and its progeny hold that as a matter of law, nondischargeable liability for condominium association dues and assessments stemming from a real covenant continues to accrue "as long as [the debtor] maintains [her] legal, equitable *or* possessory interest in the property and is unaffected by [her] discharge." *Foster*, 435 B.R. at 661 (emphasis added); *In re Batali*, 2015 Bankr. LEXIS 4050, 2015 WL 7758330, *4-9 (B.A.P. 9th Cir. Dec. 1, 2015). In adopting this rule, the *Foster* court rejected the approach used by the court in *In re Rosteck*, 899 F.2d 694 (7th Cir. 1990), finding the approach used by the court in *In re Rosenfeld*, 23 F.3d 833 (4th Cir. 1994) to be more persuasive considering Washington's property laws, to be consistent with the Restatement (Third) of Property, and to better account for the distinction between the treatment of property rights and contract rights under the Bankruptcy Code. *Foster*, 435 B.R. at 660-61.

The *Foster* rule provides a clear answer here: Ms. Goudelock's post-petition dues and assessments are not dischargeable. While Ms. Goudelock moved out of and surrendered her condominium as part of her Chapter 13 plan, she retained legal ownership of the condominium until the lender foreclosed on it on February 26, 2015. (*See* Dkt. No. 5-1 at 135, 164-65.) Opting to "surrender" a property

under the Bankruptcy Code "does not transfer ownership of the surrendered property. Rather, 'surrender' means only that the debtor will make the collateral available so the secured creditor can, if it chooses to do so, exercise its state law rights in the collateral." *In re Batali*, 2015 Bankr. LEXIS 4050, 2015 WL 7758330 at *9 (quoting *In re Rosa*, 495 B.R. 522, 523 (Bankr. D. Haw. 2013)). In other words, "[a]uthorization for surrender does not constitute a transfer of title." *In re Gollnitz*, 456 B.R. 733, 736 (Bankr. W.D.N.Y. 2011). Subject to exceptions not applicable here, under Washington law, "[e]very conveyance of real estate, or any interest therein ... shall be by deed[.]" RCW § 64.04.010. To qualify as a deed, an instrument must comply with RCW § 64.04.020, which requires that "[e]very deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgments of deeds." The confirmed Amended Plan does not substitute for a deed.

Accordingly, the court below found that because title was not transferred until foreclosure in 2015, Ms. Goudelock retained her legal interest in the property until that date. (Dkt. No. 5-1 at 186-87,196-204.) The court below concluded that because post-petition dues are not dischargeable "as long as [the debtor] maintains [her] legal, equitable or possessory interest in the property," the dues and assessments were not dischargeable here. (*Id.*)

Ms. Goudelock urges the Court to reject the *Foster* rule based on *In re Rosenfeld*, 23 F.3d 833 (4th Cir. 1994) and instead adopt a rule based on, inter alia, the decisions

in *In re Rosteck*, 899 F.2d 694 (7th Cir. 1990), and *In re Mattera*, 203 B.R. 565 (Bankr. D.N.J. 1997). (Dkt. No. 5 at 20.) In those cases, the courts found that a plain reading of 11 U.S.C. § 101's definition of "claim" lead to the conclusion that post-petition dues and assessments are contingent, unfixed, unmatured rights to payment, and are thus "debts" dischargeable under § 1328(a). *Rosteck*, 899 F.2d at 696, *Mattera*, 203 B.R. at 571-72. Ms. Goudelock also argues that to the extent Washington's property law allows condominium associations, as creditors, "to collect on the unsecured portion of a lien after foreclosure," it conflicts with the Bankruptcy Code and is preempted under the doctrine of field preemption. (Dkt. Nos. 5 at 10-16, 9-1 at 6-13.)

This Court agrees with the Bankruptcy Appellate Panel of the Ninth Circuit's decision to adopt the *Rosenfeld* approach. The Declaration giving rise to the dues and assessments in this case is a covenant running with the land, a property right; while a debtor's personal obligation under a contract may be discharged in most instances, the "bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without compensation." *In re Rivera*, 256 B.R. 828, 834 (Bankr. M.D. Fla. 2000) (quoting *United States v. Sec. Indus. Bank*, 459 U.S. 70, 75, 103 S. Ct. 407, 74 L. Ed. 2d 235 (1982)). As the *Foster* court noted, under Washington law, the obligation to pay condominium or homeowners' association dues "is a function of owning the land with which the covenant runs and not from a prepetition contractual obligation." *Foster*, 435 B.R. at 660; *Bellevue Pac. Ctr. Condo. Owners Ass'n v. Bellevue Pac. Tower*

Condo. Ass'n, 124 Wn. App. 178, 188, 100 P.3d 832 (2004) (declaration is "not a contract," but "a document that unilaterally creates a type of real property"); *see also Butner v. United States*, 440 U.S. 48, 54 n.9, 55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding," even though this "may lead to different results in different States.").

Ms. Goudelock argues that this reasoning ignores the intentionally broad definition of the term "claim." (Dkt. No. 5 at 16-22.) But, as court in *Rivera* explained, "[a]t the core of the Section 101(5) definition of 'claim' is the term 'right to payment.' The key to distinguishing a right to payment that is or is not subject to . . . discharge is simply whether the right to payment is based on a property interest or something else." *Rivera*, 256 B.R. at 833. "Any release from a covenant would in effect be a forced conveyance of a property interest from the [condominium] association to the debtor." *Id.* at 834. Ms. Goudelock's efforts to characterize the post-petition dues and assessments as contractual obligations—rather than liabilities arising from a property interest held by Sixty-01 and stemming from Ms. Goudelock's continued legal ownership of the condominium—are unavailing.

Ms. Goudelock's preemption arguments are somewhat opaque, but appear to be based on the contention that if Washington's Condominium Act, RCW 64.34, "prevails in

this matter, post-petition Condo Association dues would be subject to collection on an unsecured deficiency after a foreclosure while a chapter 13 debtor is in bankruptcy, impeding the debtor's fresh start." (Dkt. No. 5 at 12.) RCW 64.34.364(11) provides in relevant part that "the foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the [condominium] unit prior to the date of such sale." To the extent this contention forms the basis for Ms. Goudelock's preemption argument, it evinces a serious misunderstanding of the state property law relied on by the *Foster* court. As discussed above, the *Foster* court based its decision on Washington's law as to real covenants, and the interaction of the law regarding covenants with the Bankruptcy Code. In other words, even if the Condominium Act, RCW 64.34.364(11), were preempted, Ms. Goudelock's post-petition dues and assessments would still be nondischargeable under *Foster*'s reasoning.

Finally, Ms. Goudelock's argument about congressional silence as to the applicability of 11 U.S.C. § 523(a)(16) is similarly unavailing. As the Ninth Circuit has noted, "attempt[ing] to divine congressional intent from congressional silence" is "an enterprise of limited utility that offers a fragile foundation for statutory interpretation." *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 717 (9th Cir. 2004); *see also Brown v. Gardner*, 513 U.S. 115, 121, 115 S. Ct. 552, 130 L. Ed. 2d 462 (1994) ("congressional silence lacks persuasive significance") (citations and internal quotation marks omitted).

In sum, the Court finds that Ms. Goudelock's liability for the condominium association dues and assessments stemmed from her legal ownership of the condominium and the property rights held by Sixty-01 via the Declaration, not from a pre-petition contract. As such, the post-petition dues and assessments are not dischargeable and continued to accrue for as long as Ms. Goudelock maintained a legal, equitable, or possessory interest in the property, *i.e.*, until February 26, 2015. The bankruptcy court's grant of summary judgment in Sixty-01's favor is therefore AFFIRMED.

CONCLUSION

The bankruptcy court's grant of summary judgment in Sixty-01's favor is AFFIRMED. The clerk is ordered to provide copies of this order to all counsel.

Dated this 6th day of April, 2016.

/s/ Marsha J. Pechman
Marsha J. Pechman
United States District Judge

APPENDIX C — STATUTORY PROVISIONS INVOLVED

Title 11 United States Code, Section 101(5).

The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Appendix C

Title 11 United States Code, Section 101(12).

The term "debt" means liability on a claim.

Appendix C

Title 11 United States Code, Section 101(12).

The term "debt" means liability on a claim.

Appendix C

Title 11 United States Code, Section 502(a), (c)

(a) A claim or interest, proof of which is filed under section 501 of this title [11 USCS § 501], is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title [11 USCS §§ 701 et seq.], objects.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

Appendix C

Title 11 United States Code, Section 523(a)

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title [11 USCS § 727, 1141, 1228(a), 1228(b), or 1328(b)] does not discharge an individual debtor from any debt—

(1) or a tax or a customs duty--

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title [11 USCS § 507(a)(2) or 507(a)(8)], whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required--

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) (i) for purposes of subparagraph (A)--

(I) consumer debts owed to a single creditor and aggregating more than $ 675 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $ 950 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or

within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph--

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act [15 USCS § 1602]; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title [11 USCS § 521(a)(1)], with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or

actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for--

(A)

(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any

program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986 [26 USCS § 221(d)(1)], incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title [11 USCS § 727(a)(2), (3), (4), (5), (6), or (7)], or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor,

arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency; or

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 [28 USCS § 1915] (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 [28 USCS § 1915(h)] (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(c)], under--

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1108(b)(1)], or subject to section 72(p) of the Internal Revenue Code of 1986 [26 USCS § 72(p)]; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5 [5 USCS §§ 8431 et seq.], that satisfies the requirements of section 8433(g) of such title [5 USCS § 8433(g)]; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d) [26 USCS § 414(d)], or a contract or account under section 403(b) [26 USCS § 403(b)], of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that--

(A) is for--

(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 USCS § 78c(a)(47)]), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 [26 USCS § 6020(a)], or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986 [26 USCS § 6020(b)], or a similar State or local law.

Appendix C

Title 11 United States Code, Section 524(a)

(a) A discharge in a case under this title [11 USCS §§ 101 et seq.]—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title [11 USCS § 727, 944, 1141, 1228, or 1328], whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title [11 USCS § 541(a)(2)] that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1) [11 USCS § 1228(a)(1), or 1328(a)(1)], or that would be so excepted, determined in accordance with the

provisions of sections 523(c) and 523(d) of this title [11 USCS §§ 523(c) and 523(d)], in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

Appendix C

Title 11 United States Code, Section 1322(a), (b)

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title [11 USCS § 507], unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) [11 USCS § 507(a)(1)(B)] only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title [11 USCS § 1122], but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title [11 USCS § 1305];

(7) subject to section 365 of this title [11 USCS § 365], provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a) [11 USCS § 1328(a)], except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

Appendix C

Title 11 United States Code, Section 1325(a)

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter [11 USCS §§ 1301 et seq.] and with the other applicable provisions of this title [11 USCS §§ 101 et seq.];

(2) any fee, charge, or amount required under chapter 123 of title 28 [28 USCS §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title [11 USCS §§ 701 et seq.] on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of--

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328 [11 USCS § 1328]; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of

periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308 [11 USCS § 1308].For purposes of paragraph (5), section 506 [11 USCS § 506] shall not apply

to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49 [49 USCS § 30102]) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

Appendix C

Title 11 United States Code, Section 1328(a)

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 1301 et seq.], the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title [11 USCS § 502], except any debt—

(1) provided for under section 1322(b)(5) [11 USCS § 1322(b)(5)];

(2) of the kind specified in section 507(a)(8)(C) [11 USCS § 507(a)(8)(C)] or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a) [11 USCS § 523(a)];

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

Appendix C

Title 28 United States Code, Section 157(a), (b)

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title [28 USCS § 158].

(2) Core proceedings include, but are not limited to—

……..

(I) determinations as to the dischargeability of particular debts;

……..

Appendix C

Title 28 United States Code, Section 1334(a), (b)

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Appendix C

Title 28 United States Code, Section 2403(a)

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Appendix C

Revised Code of Washington, Section 64.32.060

Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the declaration or in the deed to his or her apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner.

Appendix C

Revised Code of Washington, Section 64.32.200(1), (2)

(1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including, but not limited to, (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on

behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

Appendix C

Revised Code of Washington,
Section 64.34.364(1), (12)

(1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

Appendix C

Revised Code of Washington, Section 64.90.480(6), (7)

(6) To the extent that any expense of the association is caused by willful misconduct or gross negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, even if the association maintains insurance with respect to that damage or common expense.

(7) If the declaration so provides, to the extent that any expense of the association is caused by the negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, to the extent of the association's deductible and any expenses not covered under an insurance policy issued to the association.

APPENDIX D — STATISTICAL REVIEW

National and State

statistical review FOR 2017

COMMUNITY ASSOCIATION DATA

U.S. community associations, housing units, and residents

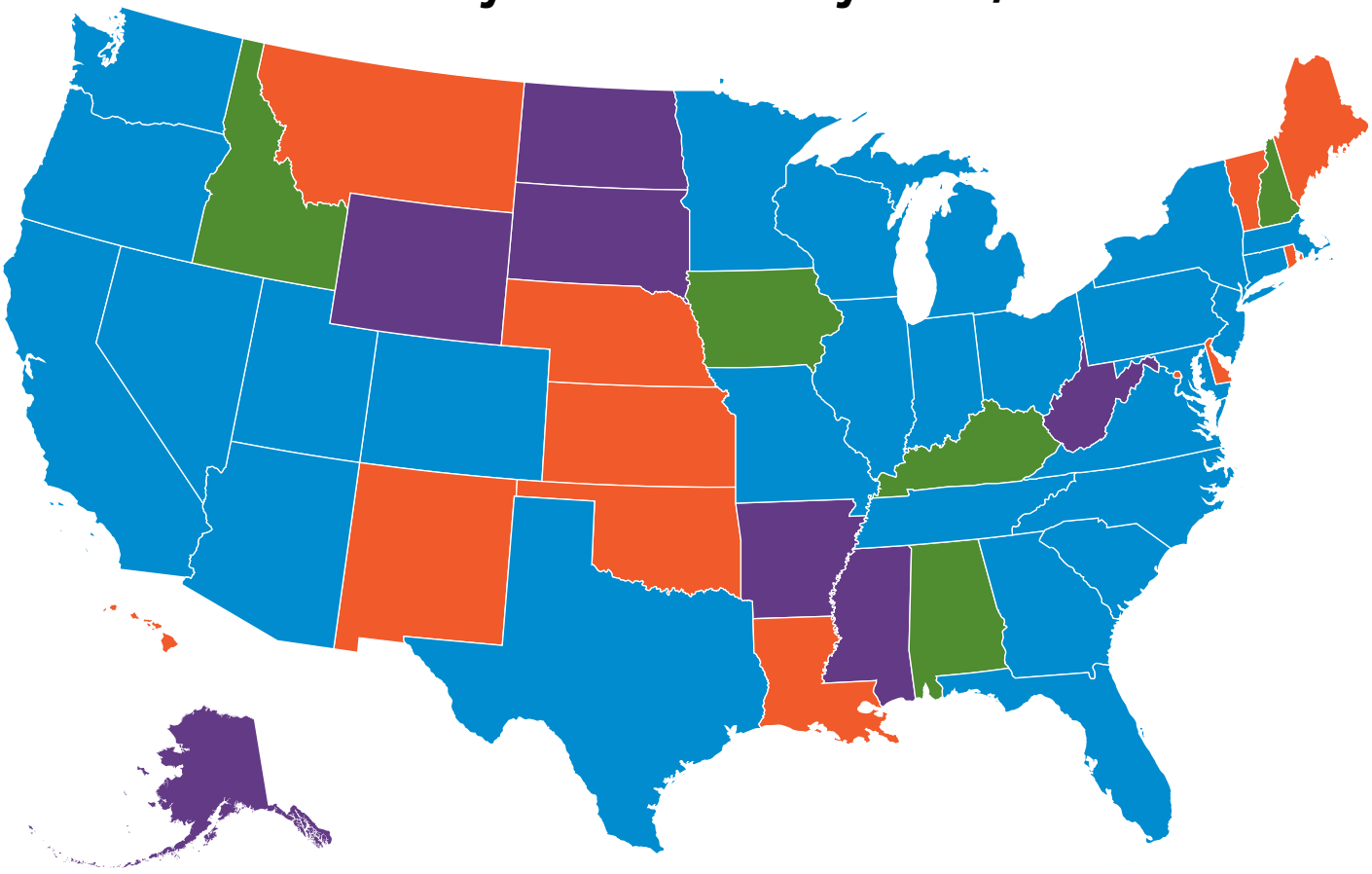
Year	Communities	Housing Units	Residents
1970	10,000	.7 million	2.1 million
1980	36,000	3.6	9.6
1990	130,000	11.6	29.6
2000	222,500	17.8	45.2
2002	240,000	19.2	48.0
2004	260,000	20.8	51.8
2006	286,000	23.1	57.0
2008	300,800	24.1	59.5
2010	311,600	24.8	62.0
2011	317,200	25.4	62.7
2012	323,600	25.9	63.4
2013	328,500	26.3	65.7
2014	333,600	26.7	66.7
2015	338,000	26.2	68.0
2016	342,000	26.3	69.0
2017	344,500	26.6	70.0

Homeowners associations account for about 54–60% of the totals, condominium communities for 38–42%, and cooperatives for 2–4%.

CAI estimates the number of U.S. community associations in 2018 is between 346,000 and 348,000.

Appendix A

Community Associations by State, 2017



State	Number of Associations	Rounded Estimated Number of Residents in Associations
Florida	48,000	9,753,000
California	45,900	9,327,000
Texas	20,000	4,064,000
Illinois	18,650	3,790,000
North Carolina	13,950	2,835,000
New York	13,850	2,814,000
Massachusetts	12,400	2,520,000
Georgia	10,600	2,154,000
Washington State	10,400	2,113,000
Arizona	9,600	1,951,000
Colorado	9,550	1,940,000
Virginia	8,650	1,758,000
Ohio	8,450	1,717,000
Michigan	8,350	1,697,000
Minnesota	7,650	1,554,000
South Carolina	6,900	1,402,000
New Jersey	6,850	1,392,000
Pennsylvania	6,800	1,382,000
Maryland	6,750	1,372,000
Missouri	5,450	1,107,000
Wisconsin	5,300	1,077,000
Connecticut	4,900	996,000
Tennessee	4,825	980,000
Indiana	4,850	985,000
Oregon	3,850	782,000
Utah	3,400	691,000
Nevada	3,225	655,000

Between 2,000 and 3,000 associations
Alabama, Idaho, Iowa, Kentucky, New Hampshire

Between 1,000 and 2,000
Delaware, District of Columbia, Hawaii, Kansas, Louisiana, Maine, Montana, Nebraska, New Mexico, Oklahoma, Rhode Island, Vermont

Fewer than 1,000
Alaska, Arkansas, Mississippi, North Dakota, South Dakota, West Virginia, Wyoming

Total U.S. associations: 344,500

NOTE: The term "community association" in this report refers to planned communities (e.g., homeowners associations, condominium communities, and housing cooperatives).

Appendix A

National Data, 2017

22–24
Percent of U.S. population in community associations.

$5.88 trillion
Value of homes in community associations.

$90 billion
Assessments collected from homeowners. Assessments fund many essential association obligations, including professional management services, utilities, security, insurance, common area maintenance, landscaping, capital improvement projects, and amenities like pools and club houses.

$25 billion
Assessment dollars contributed to association reserve funds for the repair, replacement, and enhancement of common property, e.g., replacing roofs, resurfacing streets, repairing swimming pools and elevators, meeting new environmental standards, and implementing new energy-saving features.

50,000–55,000
Community association managers (includes onsite managers and those who provide part-time support to a number of communities).

6,000–9,000
Large-scale associations, i.e., those meeting at least two of the following three characteristics: a single, contiguous community with a general manager; a minimum of 1,000 lots and/or homes; and a minimum annual budget of $2 million.

30–40
Percentage of community associations that are self-managed, meaning they may use professional assistance for specific projects, activities, and services, but do not employ a professional manager or management company.

61
Percent of new housing built for sale is in a community association.

7,000–8,000
Community association management companies.

95,000–100,000
Individuals employed by management companies.

2,380,000
Community association board and committee members.

80,500,000
Hours of service performed annually by association board and committee members.

$1.98 billion
Estimated value of time provided by homeowner board and committee members based on the Bureau of Labor Statistics estimate of $24.69 per hour for volunteer time.

Appendix A

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ABOUT CAI

Since 1973, Community Associations Institute (CAI) has been the leading provider of resources and information for homeowners, volunteer board leaders, professional managers, and business professionals in nearly 350,000 community associations, condominiums, and co-ops in the United States and millions of communities worldwide. With nearly 40,000 members, CAI works in partnership with 64 affiliated chapters within the U.S, Canada, United Arab Emirates, and South Africa, as well as with housing leaders in several other countries including Australia, Spain, Saudi Arabia, and the United Kingdom.

A global nonprofit 501(c)(6) organization, CAI is the foremost authority in community association management, governance, education, and advocacy. Our mission is to inspire professionalism, effective leadership, and responsible citizenship—ideals reflected in community associations that are preferred places to call home. Visit us at www.caionline.org and follow us on Twitter and Facebook @CAISocial.

ABOUT THE FOUNDATION FOR COMMUNITY ASSOCIATION RESEARCH

Our mission—with your support—is to provide research-based information for homeowners, association board members, community managers, developers, and other stakeholders. Since the Foundation's inception in 1975, we've built a solid reputation for producing accurate, insightful, and timely information, and we continue to build on that legacy. Visit foundation.caionline.org.

The statistical information in this report was developed by Clifford J. Treese, CIRMS, president of Association Data, Inc., in Mountain House, Calif. A member of CAI almost since its inception, Treese is a past president of CAI and the Foundation for Community Association Research. We are grateful for his continuing support of both organizations.

Additional statistical information published by the Foundation for Community Association Research is available at foundation.caionline.org.

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