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ATTORNEYS AT LAW

A recent article appeared in *The Arizona Republic* about the priority of homeowner association lien rights when a bank foreclosure occurs. In that article, there was a partial misstatement of the law related to association lien rights and their superiority or priority over mortgages or deeds of trust.

In Arizona, association liens are not superior to all deeds of trusts or mortgages. Per Arizona Revised Statutes §§ 33-1807 (if a planned community) and 33-1256 (if a condominium), association assessment liens are not superior to **first** deeds of trust (mortgages), real property taxes or other governmental assessments or liens. However, association liens are superior to second deeds of trust (mortgages) or the liens of other judgment creditors.

When the holder of a first deed of trust forecloses, the new owner takes title free and clear of the assessment lien. The association could pursue the prior owner personally for the debt. Given this, it is not unequivocally true that all costs are eventually recovered when a bank forecloses.

We wanted to provide this clarification as a wrongful lien would be recorded if it includes amounts owed by a former owner, who lost their house at a trustee's sale where the first holder of a first deed of trust foreclosed. As per a prior tip of the week, that is why it is important to know which deed of trust holder is foreclosing.

The information contained in this Homeowners Association Tip of the Week© is for informational purposes only and is not specific legal advice or a substitute for specific legal counsel. Readers should not act upon this information without seeking professional counsel.

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