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ATTORNEYS AT LAW

Does your Declaration allow your Board of Directors to Record a Notice of Violation as a tool for enforcement? This enforcement tool is often overlooked, but can be quite effective especially if a violation does not yet warrant the filing of a lawsuit.

If the Declaration allows for recording this type of notice, the association has the right to record with the County Recorder's Office a document titled "Notice of Violation" which would put the owner, and any subsequent purchaser, on notice of the existence of the violation.

There are several advantages to recording such a notice. First, it is relatively inexpensive. Second, it shows that the association is meeting its fiduciary duty to enforce violations of the Declaration. Third, if an owner is contemplating putting their house on the market, this notice may succeed in bringing them into compliance. Finally, if the association is eventually forced to bring legal action, it would show the court that the association gave the owner every opportunity to comply.

Remember that an association may not record a "Notice of Violation" unless its Declaration gives it the express authority to do so. Moreover, the association must still comply with Arizona's statutory notice requirements. Finally, be aware that if an owner contests the violation and it is ultimately shown that there is no violation, the association could be subject to a wrongful lien claim.

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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6720 North Scottsdale Road, Suite 261 * Scottsdale, Arizona 85253
Telephone 480/922-9292 * Fax 480/922-9422
e-mail curtis@ekmarklaw.com
www.ekmarklaw.com