

# HOAs sue ex-homeowners

Residents may be on hook for fines, even after bankruptcies, foreclosures

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Financially distressed residents are learning the hard way that they can't walk away from homeowners-association assessments — even if their homes

are in foreclosure or part of a bankruptcy.

Increasing numbers of lawsuits seeking delinquent HOA dues, fines and legal fees are making their way through Maricopa County Justice Courts, where defendants are often sur-

prised to find out that as long as their name is on the property deed they're responsible for mounting HOA fees.

Justices of the Peace Keith Frankel in Chandler's San Marcos Justice Court, Steven Sarkis in Phoenix's Arcadia Biltmore Justice Court and Michael Reagan in Scottsdale's McDowell Mountain Justice Court say the recession and real-estate downturn are causing these types of

cases to skyrocket.

"It's unfortunate because many individuals stop paying these HOA fees once they stop paying their mortgage, and before they know it, \$1,000 in delinquent HOA dues has turned into \$3,000 due to the court costs and attorney's fees, ... putting them even further into debt," Sarkis said.

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## HOAs pursuing costs even after foreclosures, bankruptcies

### LAWSUITS

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Former commercial-real-estate agent Paul Cox is just one of dozens in Frankel's court being sued by HOAs.

Cox, 32, said that when his income dried up and he couldn't pay his mortgage, he moved out of the house and filed for bankruptcy protection.

Cox's debts were discharged in U.S. Bankruptcy Court a year ago, and he hasn't lived in his Anderson Springs house near Dobson and Ray roads since early 2009.

Yet the Anderson Springs Homeowners Association is suing Cox for more than \$1,300 in legal fees and unpaid HOA assessments that accumulated after the bankruptcy because the bank that holds the mortgage hasn't foreclosed on the vacant house.

Cox, now living in Mesa, is

still the owner of record, and the association is billing him for assessments and legal fees that started accumulating after his bankruptcy was discharged.

"I rarely saw these kinds of cases two years ago; now I'm seeing two or three a day," Frankel said.

"I hear the horror stories all day long from people; they can't afford this or that," Reagan said. "They moved out of the property, turned it back to the bank, left the keys on the kitchen counter ... I don't think anyone had foreseen this housing crisis when HOA laws were passed years ago."

Reagan said HOAs shouldn't be considered villains because they have a responsibility to all homeowners and that if some don't pay assessments, the others will have to pay more.

Cynthia Dunham, executive director of an HOA education program at Chandler-Gilbert

Community College, called the Leadership Centre, said the associations depend on assessment revenues to maintain common areas and their only legal option is to go after the property owners of record.

She said HOAs have recently become more aggressive in their collection efforts as increasing numbers of homeowners fall behind in their payments.

"This is such a mess, and the banks are dealing with so much that foreclosure is not a quick process," Dunham said.

Mesa attorney Brian Morgan, whose practice focuses on HOA law, said many homeowners are under the false impression that walking away from their property and filing for bankruptcy protection releases them from financial obligations to pay for HOA dues.

"People are sending their keys to the bank, saying, 'I'm done; I'm walking away,'" Morgan

said.

"Then the judge has to explain that they still own the property, and the only person an HOA can go after is the one who legally owns the property."

Morgan said he advises people to stay current on HOA fees until the mortgage holder forecloses. That will avoid mounting legal and late fees.

In Cox's case, his past-due HOA fees are about \$350, but legal fees have added more than \$1,000 to what the HOA says he owes. In the court file is a letter Cox recently wrote to Frankel pleading his case. He said he was never behind in any debt payments until the real-estate market tanked and "I lost every deal I had in escrow." Cox wrote that he went from being an active commercial-real-estate agent with a superb credit score to working at a family business for \$12 an hour, filing for bankruptcy protection and changing

careers.

"After going through the humiliation and complete life change, I have been starting from the ground up again," he said in the letter.

Calls placed to Anderson Spring's HOA management company, Rossmar & Graham, were not returned. Jumana Bauwens, spokeswoman for Bank of America, which holds Cox's mortgage, said in an e-mail that the institution's foreclosures have been low since October 2008, when it started offering loan-modification programs.

Although the bankruptcy would make Cox ineligible for those programs, Bauwens offered no explanation for there has been no foreclosure on his property.

"We are currently researching the matter and will reach out to Mr. Cox to explain to him the status of his mortgage," Bauwens said.