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It's 2009 - Do you know where your Common Areas are?

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In 2001, the Arizona legislature changed the way common areas are valued for property taxation purposes. Pursuant to A.R.S. 42-13402, common areas within a homeowners association are valued at \$500.00 each. In order to qualify for the common area valuation, certain requirements must be met.

The most important requirement for common area valuation is that the Association own its common areas. The plat maps associated with the Association typically dedicate certain tracts to the Association as "Common Areas" to be owned and maintained by the Association. Additionally, the Association's CC&Rs may designate the common area tracts. At some point, the Declarant (or developer or builder other owner) must convey the common areas to the Association. Typically this conveyance is not a problem, as the developer will convey the common areas quickly and often without the Association's knowledge. However, sometimes the Declarant-developer-builder either forgets to convey the common areas or goes out of business or decides to hold on to the common areas for an extended period. If this occurs, the Association may have reason to worry.

The Association may have a problem if the owner fails to pay the property taxes associated with the common areas. The common areas can eventually be foreclosed upon by a tax lien purchaser. This means that a third party could become the owner of the Association's common areas, which is obviously not desired. In order to prevent this from occurring, the Association should ensure that it owns all of its common areas, that the common areas are properly valued and that the property taxes are current.

If the Association learns that the property taxes are delinquent on one of its common areas, and/or that the common area is not owned by the Association, then it should contact the legal owner and ask (1) that the owner convey the common area to the Association, and (2) that the owner pay the delinquent property taxes. If the owner refuses to convey the common areas or if the owner cannot be located, then the Association should consider filing a lawsuit seeking to "quiet title" to the common areas, which will result in the Association becoming the legal owner of the common areas by court order.

In summary, it is important to (1) audit the Association's common areas to determine that the Association owns all of them, (2) submit them to the county for proper valuation if it has not been done, and (3) review whether there are unpaid back property taxes, and (4) pay taxes each year in a timely manner.

Carpenter, Hazlewood, Delgado & Wood can assist with all of these steps. No one wants to receive a notice that a common area amenity has been sold for back taxes!

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