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Re: Stromme adv. Apache Wells HOA

Dear Gentlemen:

We are in receipt of the Court's most recent ruling reversing the decision of the Office of Administrative Hearings. Judge Downie determined that the Office of Administrative Hearings did not have jurisdiction to consider whether the transfer fee was invalid. As such, this contentious issue remains unresolved.

As expressed in our briefs, we believe strongly that an effort to raise funds and circumvent the special assessment provisions in the CC&Rs by instituting a significant transfer fee is specifically prohibited by the Restatement (Third) of Property. While Judge Downie has made it clear that the Restatement (Third) of Property cannot be considered at the Office of Administrative Hearings, due to the limited jurisdiction created by the legislature in enacting that new legislation, we believe a fair reading of the applicable law as set forth in our pleadings establishes that it is inappropriate for a homeowners association to collect transfer

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fees that are unrelated to the actual cost of the transfer, unless specifically allowed in the CC&Rs.

While we do not expect the Apache Wells Homeowners Association to agree with our legal opinion on this issue, we do wish to communicate our intent to continue to address this issue of concern. We believe that it is evident that the Association's insistence on collecting the transfer fees is a breach of the Board's fiduciary duties to the homeowners. As such, we are writing to ask that the Association agree to discontinue this transfer fee, so that this unfortunate dispute may be resolved along with the other matters at issue.

In the event the Association declines this request, it is the intent of our clients or other plaintiffs to assert claims to establish that the transfer fee charged by the Association is improper. While our preference would have been to avoid complicating our efforts at settlement at this time, the Association's insistence on collecting the transfer fees is so clearly in violation of applicable law, that our clients believe they cannot allow this issue to go unresolved.

As such, we are writing to request the Association agree to discontinue the imposition of this transfer fee, so that this issue will not be subject to future disputes between the parties. Please let us know your thoughts concerning this matter.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: 

Steven W. Cheifetz
For the Firm

SWC/car