



**CHEIFETZ  
IANNITELLI  
MARCOLINI P.C.**

**Attorneys**  
www.cimlaw.com

October 11, 2007

**VIA FACSIMILE: (602) 263-1784**  
(Original by U.S. Mail)

Gary Linder, Esq.  
JONES, SKELTON & HOCHULI, P.L.C.  
2901 N. Central Avenue, Suite 800  
Phoenix, Arizona 85012-2703

**Re: Doshier, et al. v. Apache Wells HOA**

Dear Gary:

Enclosed, please find our First Request for Production of Documents and an accompanying Rule 30(b)(6) Notice of Deposition for the Association. Given the history of our efforts to obtain documents from your clients, we thought it necessary to conduct a Rule 30(b)(6) deposition regarding the records we have requested after the date of production. We had hoped this issue would finally be resolved prior to the settlement conference, however your clients have made it clear they have no intention of providing us with any additional documentation, despite repeated demands and repeated promises from your office.

We are troubled by your clients' refusal to provide records, and in the face of the numerous written demands we have made, we are at a loss to understand their justification for their non-compliance with Arizona law. As you are aware, the Association is required by Arizona law to produce records to its members within ten (10) days of any written request. Our written requests have been made over and over again for the past several months, yet we have received no response. The records provided by you, which we do appreciate, are simply not responsive to our requests. Further, the Association has not objected to any of our requests, but rather has repeatedly promised to provide documentation. As such, we presume the Association has no objection to our requests, is not purporting to rely on any exception to A.R.S. § 33-1805, and instead is simply ignoring our requests. It should be noted that none of the exceptions provided for in A.R.S. § 33-1805 are applicable anyway.

1850 NORTH CENTRAL AVENUE, 19TH FLOOR • PHOENIX, ARIZONA 85004 • (602) 952-6000 • FAX (602) 952-7020

NEW YORK OFFICE  
410 PARK AVENUE, 15TH FLOOR • NEW YORK, NEW YORK 10022 • (212) 697-9400 • FAX (212) 697-9401

\* ALSO ADMITTED IN NEW YORK AND NEW JERSEY \*\* ALSO ADMITTED IN NEW YORK AND WASHINGTON \*\*\* ALSO ADMITTED IN PENNSYLVANIA  
† ALSO ADMITTED IN CALIFORNIA †† ALSO ADMITTED IN NEW YORK ††† ALSO ADMITTED IN CALIFORNIA AND OHIO  
\*\*† ALSO ADMITTED IN COLORADO \*\*\*† ADMITTED IN NEW YORK AND NEW JERSEY

STEVEN W. CHEIFETZ  
CLAUDIO E. IANNITELLI  
JOHN C. MARCOLINI\*  
GLENN B. HOTCHKISS  
SHALEEN D. BREWER\*\*  
JOHN J. SMALANSKAS\*\*\*  
BUZZI L. SHINDLER  
SUSAN LARSEN†  
JAIME C. EISENFELD†  
JONATHAN M. LEVINE\*  
STEWART F. GROSS††  
HAROLD R. NEWMAN††  
ROMAN A. KOSTENKO†††  
MELANIE C. MCKEDDIE  
MATTHEW A. KLOPP  
CHASE E. HALSEY  
DANIEL P. VELOCCI††

OF COUNSEL  
WALTER CHEIFETZ  
BRAD K. KEOGH  
ILENE H. COHEN\*\*\*



CHEIFETZ  
IANNITELLI  
MARCOLINI P.C.

J. Gary Linder, Esq.  
October 11, 2007  
Page 2

---

To put this simply, we know additional documentation exists, such as email correspondence, surveys, contracts, proposals, and all other records specified in our Request for Production. Your clients confirmed as much in their depositions. In light of this fact, we hoped a formal request would not be necessary. However, after months of waiting, we now realize formal discovery is necessary.

In light of the Association's conduct in refusing to disclose records, we are not confident that we can simply rely on documentation provided in response to our Request for Production. Instead, we feel it necessary to take the deposition of the individual with the most knowledge about the location and content of the documents produced. Please be advised that we will no longer address this matter informally. We have been more than patient, and it is finally time for the Association to meet its obligations in disclosing records to our clients.

I have selected a date for the 30(b)(6) deposition for the end of November, 2007. If your schedule conflicts with the date and time I have selected, please let me know and I will be happy to reschedule. In the interim, I look forward to seeing you at the settlement conference.

Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: 

Melanie C. McKeddie  
For the Firm

Enclosure

1 Steven W. Cheifetz (011824)  
2 Stewart F. Gross (019804)  
3 Melanie C. McKeddie (022942)  
4 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**  
5 1850 North Central Avenue, 19<sup>th</sup> Floor  
6 Phoenix, Arizona 85004  
7 (602) 952-6000

8 Attorneys for Plaintiffs

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **KEN DOSHIER, et al.,**

12 Plaintiffs,

13 v.

14 **APACHE WELLS HOMEOWNERS**  
15 **ASSOCIATION, INC.,** an Arizona nonprofit  
16 corporation, et al.,

17 Defendants.

No. CV2007-005805

**PLAINTIFFS' FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS  
AND THINGS**

18 **TO: Defendant, DC Lot Apache Wells Homeowners Association, Inc.**  
19 **and its attorney, Gary Linder, Esq.**

20 **PLEASE TAKE NOTICE** that demand is hereby made pursuant to Rule 34, *Ariz.R. Civ.P.*  
21 by Plaintiffs that Defendant, Apache Wells Homeowners Association, Inc. (the "Association"),  
22 produce the documents or things designated in the attached list be produced for inspection and  
23 copying.

24 Except as provided otherwise in the attached list, the place of inspection is:

25 Cheifetz Iannitelli Marcolini, P.C.  
26 1850 North Central Avenue, 19<sup>th</sup> Floor  
Phoenix, Arizona 85004

1           The attached list sets forth the items to be inspected, either by individual item or by category;  
2 describes each item and category with reasonable particularity. This document specifies the reason-  
3 able time, place and manner of making the inspection and performing the related acts in connection  
4 with each item.

5           The party upon whom this Request is served shall serve a written response, in accordance  
6 with the Definitions and Instructions which follow, within 40 days after the service of the  
7 Request, except that a defendant may serve a response within 60 days after service upon such  
8 defendant of the Summons and Complaint or other documents initiating the civil action. The  
9 response shall state, with respect to each item or category, that inspection and related activities will  
10 be permitted as requested, unless the request is objected to, in which event the reasons for objection  
11 shall be stated.

12           The documents or things sought by this Request include documents and things in the  
13 possession, custody or control of the party or person, his attorney and all agents, servants, represen-  
14 tatives, investigators and others who may have obtained custody of the documents and things on  
15 behalf of the opposing party or his attorneys.

16           Where the terms "you", "Plaintiff", "Defendant" or any other designation for a party are  
17 used, they are meant to include every individual party, and separate responses should be given for  
18 each person named as a party, if requested. Where an individual request calls for a response  
19 which involves more than one item, the response of each party should be clearly set out so that it  
20 is understandable and so that the items are differentiated.

21           Each party upon whom this request is served is hereby notified that should such party fail to  
22 comply with this request or any part hereof, then the undersigned party may seek sanctions under  
23 **RCP 37.**

24           COPIES MAILED pursuant to **RCP 5** this date to these persons, in these capacities and at  
25 these addresses:  
26

1  
2 J. Gary Linder, Esq.  
3 JONES, SKELTON & HOCHULI, P.L.C.  
4 2901 North Central Avenue, Suite 800  
5 Phoenix, Arizona 85012  
6 Attorneys for Defendants

7  
8 DATED this 14<sup>th</sup> day of October, 2007.

9 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

10 By Melanie C. McKeddie  
11 Steven W. Chiefetz, Esq.  
12 Melanie C. McKeddie, Esq.  
13 Attorneys for Plaintiffs

14 Original and copy of the  
15 foregoing mailed  
16 this 11 day of October, 2007, to:

17 J. Gary Linder, Esq.  
18 JONES, SKELTON & HOCHULI, P.L.C.  
19 2901 North Central Avenue, Suite 800  
20 Phoenix, Arizona 85012  
21 Attorneys for Defendants

22  
23  
24  
25  
26  
By JGL

## DEFINITIONS

1  
2           1. The term "document" as used herein, includes, but is not limited to, the original,  
3 drafts, copies and non-identical copies bearing marginal and other notations or marks not found on  
4 the original, of every writing or recording or every kind or description, whether handwritten,  
5 printed, filed, drawn, sketched, punched, transcribed, taped, printed, filed, drawn or recorded by  
6 any physical, mechanical or electronic means, including without limitation, books, records,  
7 agreements, papers, reports, financial statements, confirmations, receipts, memoranda (including  
8 memoranda of telephone conversations, other conversations, discussions, agreements, acts and  
9 activities), transcripts, letters, envelopes, telegrams, cables, telex messages, facsimile transmittals,  
10 tabulations, studies, analyses, working papers, summaries, opinions, journals, desk or other  
11 calendars, appointment books, diaries, lists, telephone message notations, checkbooks, cancelled  
12 checks, bills, bank statements, drafts, bills of exchange, circulars, brochures, catalogs,  
13 photographs or films, phonograph, tape, wire or other sound recordings or transcripts thereof,  
14 diary entries, post cards, greeting cards, notebooks, bulletins, memo pads, desk pads, computer  
15 print-outs, tapes or cards, tax returns, or receipts of any kind, whether federal, state, county or  
16 municipal, business records, books of account, sworn or unsworn, TV and records, attorney and  
17 accounting invoices, or any other writing, paper, recording or thing within the meaning of  
18 "document" as set forth above, wherever located, and whether prepared by you for your own use,  
19 or for transmittal, or received by you from any source, which you now have in your custody or  
control, or to which you otherwise have access.

20           2. "Relating to" as used herein with reference to a subject shall mean both the following:

- 21           (i)     Containing, comprising, constituting, stating, setting forth and/or recording,  
22                   including, negating or manifesting in any way, in whole or in part, that  
                  subject;  
                  or  
23           (ii)    Describing, discussing, reflecting, interpreting, identifying, concerning,  
24                   contradicting, referring to, relating to, or in any way pertaining to, in whole  
25                   or in part, that subject.  
26



1 B. In producing documents called for herein, you shall segregate the documents so as  
2 to identify the numbered requests to which such document responds.

3 C. If you withhold from production any document requested hereunder solely on the  
4 basis of any asserted privilege, including attorney-client privilege or work product rule, you shall  
5 provide the following information:

- 6 (a) the place, approximate date and manner of recording or preparation of the  
7 document;
- 8 (b) the name and title of the sender and the name and title of recipient of the  
9 document;
- 10 (c) the name of each person or persons participating in the preparation of the  
11 document;
- 12 (d) the name and corporate position, if any, of each person to whom the  
13 contents of the documents have heretofore been communicated by copy,  
14 exhibition, reading or substantial summarization;
- 15 (e) a statement of the basis on which privilege is claimed and whether or not the  
16 subject matter of the contents of documents is limited to legal advice or  
17 information provided for the purpose of securing legal advice;
- 18 (f) the number of the request to which the document is responsive; and
- 19 (g) the identity and corporate position, if any, of the person or persons  
20 supplying the attorney with the information requested in Subsection (i) and  
21 (vi) above.

22 D. If you claim that any document responsive to any of these requests has been lost or  
23 destroyed, describe and identify each such document by stating in writing:

- 24 (a) the name of the author, the names of the persons who received the original  
25 and all copies and the date and subject matter;
- 26 (b) the circumstances under which each such document was lost or destroyed;  
and
- (c) your efforts to locate each such document.

27 E. This request shall be deemed continuing to the extent required by the Rules of  
28 Court.



**SCHEDULE A**  
**DOCUMENTS AND THINGS TO BE PRODUCED**

1. Any and all documents relating to the Project, including but not limited to, contracts, surveys, proposals, estimates, communications, correspondence, bids, evaluations, notes, memoranda, and agreements.
2. A complete list of homeowner names and mailing addresses as on file with the Association from January 1, 2005 through the date of this Request.
3. Any and all communications, electronic or otherwise, between the Board of Directors for the Association and the Board of Directors for Defendant Apache Wells Country Club from January 1, 2005 through the date of this Request.
4. Any and all communications, electronic or otherwise, amongst members of the Association's Board of Directors Association regarding Association business from January 1, 2005 through the date of this Request.
5. Any and all documents relating to the Association's purchase of any property from January 1, 2005 through the date of this Request, including but not limited to, contracts, appraisals, surveys, proposals, estimates, communications, correspondence, bids, evaluations, notes, memoranda, and agreements.
6. Any and all financial records of the Association from January 1, 2005 through the date of this Request, including but not limited to, bank statements, ledgers, invoices, accounts receivable reports, accounts payable reports, operating reports, budgets, profit and loss reports, and projections.

1 Steven W. Cheifetz (011824)  
2 Stewart F. Gross (019804)  
3 Melanie C. McKeddie (022942)  
4 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**  
5 1850 North Central Avenue, 19<sup>th</sup> Floor  
6 Phoenix, Arizona 85004  
7 (602) 952-6000

8 Attorneys for Plaintiffs

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 KEN DOSHIER, et al.,

12 Plaintiffs,

13 v.

14 APACHE WELLS HOMEOWNERS  
15 ASSOCIATION, INC., an Arizona nonprofit  
16 corporation, et al.,

17 Defendants.

No. CV2007-005805

**RULE 30(b)(6) NOTICE OF  
DEPOSITION**

18 **TO: Defendant, DC Lot Apache Wells Homeowners Association, Inc.**  
19 **and its attorney, Gary Linder, Esq.**

20 **YOU ARE HEREBY NOTIFIED** that, pursuant to Rule 30(b)(6), Ariz.R.Civ.Proc.,  
21 you are requested to designate and produce for deposition an officer, director or managing  
22 agent, or such other person who consents to testify on your behalf, to testify as to matters  
23 known by or reasonably available to you with respect to the following subjects:

24 The person most knowledgeable about efforts to provide  
25 documents requested by Plaintiffs and by Plaintiffs' attorneys, by  
26 letter and pursuant to Plaintiffs' First Request for Production of  
Documents and Things, and most familiar with the actual  
production of such documents.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**DATE AND TIME OF DEPOSITION:**

Wednesday, November 28, 2007, at 10:00 a.m.

**PLACE OF DEPOSITION:**

Cheifetz Iannitelli Marcolini, P.C.  
1850 N. Central Avenue, 19<sup>th</sup> Floor  
Phoenix, AZ 85004

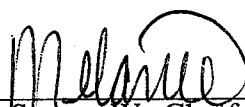
The undersigned certifies that copies of this notice will be served as follows:

Served by:  Mailing;  Delivering a copy to:

J. Gary Linder, Esq.  
JONES, SKELTON & HOCHULI, P.L.C.  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Attorneys for Defendants

DATED this 11<sup>th</sup> day of October, 2007.

**CHEIFETZ IANNITELLI MARCOLINI, P.C.**

By   
Steven W. Cheifetz  
  
Melanie C. McKeddie  
Attorneys for Plaintiffs