

## Death by HOA Foreclosure: just another statistic from an unknown person

Not many people knew Sabina Anna Prioletta, a single, 37 year-old female on government disability, weighing some 100 pounds at 5-2. She was trying to survive at the poverty level on the disability payments. In 2001 she inherited enough money to buy a 924 square foot, 2 story attached home in Phoenix at Camelback and west 41<sup>st</sup> avenue, built in 1972 (one of the Hallcraft Villas subdivisions). Not the best part of town, but decent, and it was the only thing she could call her own, the only asset she had, her home.



Sabina wanted to be secure in her future and paid full price for home, some \$35,000. Unfortunately, it was in a homeowners association.

Three years elapse without any demands or notices for any payments. Then in May 2005 Sabina is hit with a civil suit for back payments,

but beginning only in 2004. There was prior notice and demand for payment by somebody saying that they were the HOA, and that Sabina had a binding contract to make these payments amounting to some \$3,000. She ignores these “demands”, because she signed no contract with any HOA agreeing to make any payments, like one must do in order to buy a car or to get any type of loan. (Signing a contract with an HOA is not required under equitable servitudes, and its constructive notice law).



At this time, the HOA engaged Charles Maxwell as its attorney. (There are about a dozen Hallcraft Villas xxx HOAs and Maxwell appears as attorney of record for foreclosures for several of them as far back as 2001). Mr. Maxwell is a CAI member, a platinum sponsor of its Arizona chapter, and member of its College of Community Associations Lawyers. About this time the HOA appears to have also hired AS & A Property Management (formed in January 2004).

Not having any funds to fight back, or to understand that she was obligated to make these payments, Sabina answered the complaint as a pro per (representing herself without an attorney) with the help of a long time friend, Ron. She denied the charges and alleged disability as a reason for seeking a delay in the trial. Ron sends a letter to the court clerk providing background materials, which the court ignores because it is not from an attorney, nor the defendant. Just before the 150-day “inactive” deadline, the court advises both parties that nothing has been done with the complaint and

it will be placed on “inactive status”. But in Superior Court, as well as in Justice Court, the HOA attorneys control the field with their knowledge of the “game”, the Rules of Civil Procedure.

### **Summary Judgment: put the nail in the case coffin**

Sabina and Ron believe they won and that the HOA is dropping the claims. Sabina files to “quiet title”, so that there are no claims against her home. Big mistake, it just woke up the HOA attorney who files for Summary Judgment. This is the biggest gun, the “sledge-hammer”, used quite frequently by the learned HOA attorneys against pro pers. This is a “reply with the facts or you’re dead meat” tactic. It is a motion by the HOA that the defendant did not present any valid, legally acceptable -- according to the Rules -- defense or denial of the HOA’s claims. What does a pro per know about Rule 56 and its criteria for “issues of material fact”? Or how to reply to this motion in accordance with the Rules and prepare a meaningful Statement of Facts, as required by the Rule 56? What does a pro per know about failing to respond within the Rules deadline? Or that you only get one shot at a defense, which must include any counterclaims against the HOA, or otherwise they, too, are forbidden in the future.

The judge grants the motion for Summary Judgment, stating that the “defendant’s failure to file the required answering memorandum as consent to the granting of plaintiff’s motion.” What does a pro per know about Rule 60(c), Mistake, or Rules 59(a) and (i), New Trial, for example. Sabina cannot qualify for a loan to pay off the judgment -- no income -- so the six-month redemption period has no affect.

She will, most likely, become a ward of the state, or just another homeless nobody because the HOA must survive at all costs, and the state supports this view through its anti-homeowner laws: no homestead protection, and the right to unconscionable foreclosure as excessive punishment.

The HOA ignores its ethical business responsibilities to its member-owners, and to the greater community, regardless of the empty statements made by CAI in its “Rights and Responsibilities” position. The HOA is not held to act in an ethically responsible manner as are accounting firms, drug companies, etc. What happens to the homeowner is not the HOA’s concern, just defending any threat to its imagined crisis of survival. We can ask, “How was the HOA’s survival affected over the three years when no assessments were collected? And, apparently, it’s not the concern of the state, either.

Sabina avoided the auction of her home when, on June 21<sup>st</sup>, an “investor” gave her just \$10,000 for her home before the auction sale. She paid the HOA its judgment -- \$3,700 plus to the HOA; \$3,554 to the HOA attorney, Maxwell, plus court costs. The investor immediately obtained a \$61,000 loan, and has the home for sale at \$84,000. Sabina lived at a motel until July 19<sup>th</sup>, almost a month from the forced sale of her home, when she was found dead. According to the police report, as told by Ron, she died from “poor swimming ability” and it was “an accidental death”. The investigating detective will not be available until November 14<sup>th</sup>. I’m told it will take 14 days to get a copy of the report.

Nobody really knew Sabina Anna Priolella. She’s just another statistic, another homeowner who lost everything because of the permitted draconian punishment of death by HOA foreclosure, without her right to the homestead exemption.