

REAL ESTATE

A Phoenix couple's home flooded twice. They say it's the HOA's fault. Now they're in court

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In August 2021, Nick and Josie Argyros woke up in the middle of the night to a thumping noise. Nick got out of bed to investigate the source of the sound and was alarmed when he found himself standing in ankle-deep water.

“I thought it must've been from a pipe,” Nick Argyros said. “When we turned the light on, I saw water over my ankles that was dark brown, and I knew that water was not from a pipe.”

The murky water wasn't just in their bedroom. It spread throughout their single-story home and was flowing down the stairs that led to their fully furnished basement, which was completely submerged in water. Water had also entered their garage.

That night began many frustrating months — verging on two years — for the Argyroses. A second flood, significant financial outlays and conflict with their homeowner association is culminating in a court case being heard in late June. Their experience, the couple said, is a cautionary tale about the role and responsibilities of homeowner associations.

On that August 2021 night, amidst their panic, the Argyroses noticed that the water on the main floor was rising and nearing electrical outlets on the wall. More than an hour after they called 911, the fire department arrived, Nick Argyros said.

“They kept telling us that it was a non-emergency and they would give us to some operator,” he said. “I don't think they could figure out how the hell we had that much water in our house.”

It had rained that night near their Phoenix home, but the Argyroses “couldn’t imagine how that much water was in the house,” Nick Argyros said. Nearly 72,000 gallons of water entered their basement, and several inches of water filled their main floor, according to court documents.

It took over three days to pump out the basement, and the sludge on the main floor eventually dried up, Nick Argyros said.

Nearly one year later, in July 2022, the Argyroses’ home flooded again after a rain. This time, several inches of water entered the garage and the main floor of their house.

“You never think that your home is going to flood a first time, let alone a second flood,” Nick Argyros said.

The home has been in the family since 1994 and the couple never experienced any type of flooding prior to August 2021, according to legal filings.

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Where did the water come from?

The Argyroses' home in the subdivision Legacy at the Pointe sits at the base of Lookout Mountain. When it rains, the mountain’s drainage system carries water through a wash that extends into the subdivision.

A section of that wash runs in front of the Argyros home and contains a metal culvert underneath their driveway.

Over time, debris and vegetation fill the culvert, which causes the draining mechanisms to not properly function, Nick Argyros said. This is what the couple said is the cause of both of their house floods.

“All these rocks, volunteer trees, which have just run amok, and people’s backwash from their pools get into the wash,” Josie Argyros said. “So, the problem is that the culvert is blocked and it's just going to keep flooding until it's totally cleaned.”

‘We’re just stuck’

Standing outside of the Argyroses’ home, it's hard to envision the damage that the two floods caused.

“Everything looks copacetic from the outside,” Josie Argyros said. “But when you walk through these doors, you just can’t even grasp what you're seeing.”

Their home’s interior has missing doors, exposed cement flooring and walls without insulation and drywall. Exposed nails stick out of the ground, and the furniture is sparse. The basement had to be completely gutted.

The couple’s cars, which were in their driveway during the first flood, were both totaled. Their son loaned them his car, which ended up being wrecked during the second flood. Mementos that they stored in the garage and basement were also ruined.

“There wasn’t very much that wasn’t touched by the floods,” Nick Argyros said. “If it wasn’t hanging on the wall, it had some degree of destruction.”

After staying with family for a time after the floods, the couple began living out of their primary bedroom and laundry room. They have a folding table set up in their closet as a makeshift office and their laundry room now doubles as a kitchen.

The Argyroses are worried about rebuilding their home because there’s no guarantee that another flood won’t occur, Josie Argyros said, and if they wanted to sell their home, it would be difficult to find a buyer. “We’re just stuck,” she said.

“This has just touched us in every imaginable way: physically, emotionally and financially,” Josie Argyros said. “It's shaved years off of us that we will never get back.”

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Who’s responsible for the culvert and wash?

The rules of a planned community are detailed in the covenants, conditions and restrictions. These rules divvy up responsibilities and obligations between homeowners and the

homeowner association. Association rules typically define spaces and property as common areas and who is responsible for them.

“The CC&Rs are considered a contract between the HOA and the homeowner by Arizona law,” said Anjali Patel, an attorney with Tyler Allen Law Firm.

The Argyros home is part of the Pointe Mountainside Golf Community Association. The drainage systems in their neighborhood, including the wash and culvert, are defined as common areas that the homeowner association bears the responsibility to maintain and repair, according to the association's 1990 rules.

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Homeowners file lawsuit against their HOA

The Argyroses filed a lawsuit against their homeowner association. They claim that the association failed to maintain the wash and culvert, causing them to become full of debris and overflow with rainwater.

The association has a contract with a licensed landscaping company to clean the culvert and wash as part of its efforts to keep the neighborhood “prepared for natural occurrences,” according to a statement from Pointe Mountainside Golf Community Association provided by Gordon C. James Public Relations.

The association also claims that the culvert, which was installed in 1994, “was not designed to withstand the amount/intensity of rainfall that occurred during the two storms — which produced the highest and second-highest intensity rainfalls in the history of the community, respectively.”

The association said it will never be able to completely prevent storm runoff during all storms. That's why it recommends flood insurance for homeowners in the community, the statement said.

After the flooding, the Argyroses got flood insurance. On top of that, they're also paying for renovations and storage units. They also hired hydrologists as part of their lawsuit.

Not everything that the couple lost during the floods can be replaced or rebuilt, but the Argyroses are hoping that the lawsuit will make their homeowner association “take responsibility for our loss, but even more so for the conditions we have had to live in for a long time,” Nick Argyros said.

A judge is set to hear the oral arguments of the case at the end of June, Josie Argyros said.

“This is our life, our investment, our home,” she said. “All of our memories are here, and we thought that this would be our forever home. We still want it to be our forever home.”

Assessing homeownership risks and addressing HOA conflict

Attorney Patel said it is not uncommon for a homeowner association to fall short of meeting its responsibilities laid out in the covenants, conditions and restrictions.

“Some people look at the HOA as, ‘Oh, this is a professional group, and it's their job to do everything the CC&R says,’” Patel said. “But the reality is the entire process is being pushed forward and run by volunteer homeowners.”

When it comes to managing the risks of owning a home, it's important for homeowners in a planned community to know who's responsible for what by reading the covenants, conditions and restrictions, Patel said.

“Homeowner associations are only as responsible as the homeowners make sure they are,” Patel said.

There are two routes homeowners can take when their homeowner association does not uphold its responsibilities, Patel said. If issues can't be resolved between homeowners and their association, a complaint can be filed with the Arizona Department of Real Estate or a county superior court, Patel said.

But the Department of Real Estate “doesn't have the power to award damages,” so a homeowner's best option for financial claims is to go to court, said Jonathan Dessaulles, an attorney and founder of Dessaulles Law Group.

Homeowners should immediately get in touch with a lawyer, document any damage and find a professional who can verify the cause of the damage, he said.

Homeowners, Dessaulles said, also have the option of joining their association board or voting to remove current members.

“The only people who can hold associations responsible are the homeowners,” Dessaulles said. “And, unfortunately, the ability of the homeowners to do so is pretty limited.”