

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. Schmidt,
Petitioner,

v.

Starpass Master Homeowner Association,
Inc.,
Respondent.

No. 25F-H044-REL

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: June 20, 2025 & April 30, 2026.

APPEARANCES: Michael J. Schmidt ("Petitioner") appeared on his own behalf with Bruce Pryor as a witness. Frederick Christopher Ansley appeared on behalf of Starpass Master Homeowner Association, Inc. ("Respondent"). Michael Morris and Douglas Imperi Jr. observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: May 15, 2025, NOTICE OF HEARING, December 29, 2025, AMENDED NOTICE OF HEARING; including the referring agency's attached administrative file, Respondent Exhibits R and S, MINUTE ENTRIES and ORDERS dated June, 27, 2025, August 12, 2025, September 10, 2025, October 14, 2025, November 17, 2025, December 03, 2025, January 05, 2026, January 07, 2026, February 20, 2026, and April 02, 2026, were admitted into the evidentiary record.

After review of the hearing record in this matter, the undersigned Administrative Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1 1. The Department is authorized by statute to receive and to decide petitions
2 for hearings from members of homeowners' associations and from homeowners'
3 associations in Arizona.

4 2. On or about March 20, 2025, Petitioner filed 129-page single-issue HOA
5 DISPUTE PROCESS PETITION ("PETITION") with the Department.¹ Petitioner specifically
6 alleged as follows:

- 7 • Respondent/Declarant has kept Declarant Control over Starr Pass Homeowners
8 Association (SPHOA) by refusing to recognize and/or comply with both Arizona
9 Law and the SPHOA Declaration and Bylaws; Respondent/Declarant has
10 maintained his status of Declarant for over 30 years by amending the SPHOA
11 Declaration to maintain his Type B Membership using the 4th, 6th, 7th and 8th
12 amendments to the 1992 Amended and Restated Declaration with the 8th
13 Amendment defining an indefinite period of time for the termination of the Type B
14 membership; in addition, Respondent/Declarant states that he has 6639 Type B
15 votes because of an alleged 2231 Planned Lots on property in SPHOA which he
16 allegedly owns; this conduct by Respondent/Declarant is believed to be in violation
17 to AZ A.R.S. 33-1820 (Adopted 9/14/2024) as well as going against Article III
18 Sections 2 and 5 of the SPHOA Declaration and Articles IV and V of the SPHOA
19 Bylaws; Petitioner requests the court to issue a subpoena to
20 Respondent/Declarant requesting that the Respondent/Declarant identify any and
21 all property within SPHOA by Parcel Number which he now owns and which are the
22 justification for his alleged 2231 Planned Lots owned by Respondent/Declarant.

23 In the PETITION, Petitioner marked and identified alleged violations of Arizona Revised
24 Statute ("ARIZ. REV. STAT.") § 33-1820, Bylaws Articles III-V, and Declaration Article III
25 Section 2 and 5-6, and Article XI Section 8 by maintaining Declarant Control through
26 amending community documents.² Petitioner requested an order directing Respondent to
27 abide by the aforementioned statutes and governing documents. Petitioner did not
28 request the imposition of a civil penalty against Respondent.³

- 29 a. On an unknown date, Petitioner tendered a \$500.00 filing fee to the
30 Department for the petition.

31 3. On April 03, 2025, the Department issued a HOA NOTICE OF PETITION to
32 Respondent.⁴

33 ¹ See Agency File, Petition for ADRE 2025 (1).pdf.

34 ² *Id.*

35 ³ *Id.*

36 ⁴ See Agency File, Notice of Petition.pdf.

1 4. On or about April 20, 2025, Respondent returned its ANSWER to the
2 Department whereby it denied all complaint items in the petition.⁵

3 5. On May 15, 2025, the Department issued a NOTICE OF HEARING setting the
4 above-captioned matter for hearing before ALJ Sam Fox at the Office of Administrative
5 Hearings ("OAH"), an independent state agency, at 1:00 p.m. on June 20, 2025, to
6 address Respondent's alleged violation(s) of ARIZ. REV. STAT. § 33-1820, Bylaws Articles
7 III-V, and Declaration Article III Sections 2 and 5-6, and Article XI Section 8.⁶

8 6. On June 20, 2025, ALJ Sam Fox opened the hearing record in the above-
9 captioned matter. However, the parties were unable to conclude the presentation of their
10 evidence in the time allotted. As a result, the matter was continued and set for a Status
11 Update on June 27, 2025, for the parties to provide stipulated dates of availability for
12 further hearing.

13 7. On June 24, 2025, Petitioner submitted notice to the Tribunal that included
14 the following advisement, in pertinent part:

15 We plan on filing at least 2 and possibly 3 additional issues. One will be
16 Termination of Right to Appoint Members of the BOD. Article III, Section 5 and one
17 will be Violation of ASR 33-1820 Paragraph 1. Article III, Section 2 does not
18 provide a date for termination nor a method of calculating for Declarant Control.
19 Regarding the third, I need your input on. Our goal is to have an order that states
20 that Declarant Control has ended. The current issue and the 2 new issues are all
related to Declarant Control but I do not know if the third new issue of termination of
Declarant Control requires a sperate filing of this issue.
(All errors in original.)

21 8. On June 27, 2025, an ORDER GRANTING CONTINUANCE was issued by the
22 Tribunal that scheduled a continued hearing at 9:00 a.m. on September 10, 2025.

23 9. On August 11, 2025, Respondent submitted the following correspondence
24 to the Tribunal:

25 On July 24, 2025, Petitioner promised—" I will also be filing this week 2 additional
26 Issues which I would like to have consolidated with the current Hearing." Certainly,
27 the Respondent did not receive the "additional two Issues" and it has been 18-days
since this undertaking was provided. As I may require reasonable time to prepare

28
29 ⁵ See Agency File, Response Received.pdf.

30 ⁶ See Agency File, Notice of Hearing.pdf.

1 regarding these Issues and to avoid another continuation, Respondent respectfully
2 request the Court to set a date specific for Petitioner to identify all the Issues.

3 10. On August 12, 2025, the Tribunal issued an order that required Petitioner to
4 submit proof of new petition and request for consolidation and/or petition amendment to the
5 Department by August 20, 2025.

6 11. On August 20, 2025, Petitioner notified the Tribunal that he had submitted a
7 new dual-issue HOA DISPUTE PROCESS PETITION with the Department and had also
8 requested that those issues be consolidated with the matter at bar.

9 12. On August 26, 2025, Mr. Imperi Jr. submitted a MOTION FOR LEAVE TO FILE
10 AMICUS BRIEF on behalf of SWVP Starr Pass LLC.

11 13. On September 02, 2025, Petitioner filed a MOTION TO AMEND COMPLAINT in
12 this matter to include two additional issues.

13 14. On September 04, 2025, the Tribunal issued an ORDER to advise the parties
14 that OAH did not have authority to add issues to the pending matter and could only
15 consolidate existing matters. The Tribunal advised that because there was no second
16 complaint pending for Petitioner before OAH, Petitioner's motion was denied. In addition,
17 the Tribunal provided notice that the September 10, 2025, continued hearing was
18 converted to a telephonic prehearing conference. The Tribunal further advised that the
19 Amicus Brief was accepted.

20 15. On September 10, 2025, the Tribunal issued an ORDER GRANTING
21 CONTINUANCE that set the above-captioned matter for a Status Update on October 13,
22 2025.

23 16. On October 14, 2025, the Tribunal issued an ORDER GRANTING
24 CONTINUANCE that set the above-captioned matter for another Status Update on
25 November 14, 2025.

26 17. On November 17, 2025, the Tribunal issued an ORDER to advise the parties
27 that further hearing had been scheduled for 1:00 p.m. on January 06, 2026, because
28 Petitioner failed to provide a Status Update.

29 18. On December 03, 2025, the Tribunal issued an ORDER to advise the parties
30 that OAH does not have jurisdiction over issues unless the Department authorizes

jurisdiction, and thusly could not add additional issues for adjudication in the matter at bar.

The Tribunal also provided the following advisement:

[SWVP] is not a party to this proceeding. SWVP has not entered any evidence in the record, and SWVP will not be given the opportunity to present evidence. The Amicus Brief filed by SWVP is not evidence. The Amicus Brief holds the limited value of input from a person who is interested in the outcome of this matter.

19. On December 29, 2025, the Department issued an AMENDED NOTICE OF HEARING that confirmed consolidation of the following two (2) additional issues for hearing:

- Is the 8th Amendment to Article III Section 2 of Starr Pass HOA Declaration in violation of A.R.S. § 33-1820 and thus unenforceable because A.R.S. § 33-1820 ¶ 1 requires a date of or method for calculating the date of termination of Type B Membership and Amendment 8 does not meet this requirement and thus, the date of termination reverts to the prior 7th Amendment which defines a termination date of 12/31/2020 because Article XI, Section 5 Conflict of Provisions of SPHOA 1992 Amended & Restated Declaration states that AZ Law will control in case of conflict between AZ Law and the Master Declaration
- Has the Type B Membership been terminated and converted to Type A Membership due to (1) the finding in pending Docket 25F-H044-REL relating to violation of A.R.S. § 33-1820 ¶ 2 due to Declarant conveying the second to last lot to a buyer and/or (2) the finding in Issue [2] above relating to unenforceability of the 8th Amendment to Article III Section 2 of SPHOA due to A.R.S. § 33-1820 ¶ 1 which requires us to revert back to the prior 7th Amendment which defines the termination and conversion of Type B Membership as 12/31/2020 thus, pursuant to A.R.S. § 33-1820 ¶ 1 and/or that Declarant Control has come to an end for SPHOA Respondent/Declarant and Respondent/Declarant needs to hold a Meeting of SPHOA pursuant to the Declaration Article III Section 6 and the Bylaws in Article III, Article IV and Article V for electing a new Board of Directors using only the votes of Type B Members.

- a. On an unknown date, Petitioner tendered a \$1,000.00 filing fee to the Department for the second petition.

20. On January 07, 2026, per Respondent's request, the Tribunal issued an ORDER GRANTING CONTINUANCE that set the above-captioned matter for further hearing at 1:00 p.m. on February 23, 2026.

21. On or about February 06, 2026, the above-captioned matter was reassigned to the undersigned for adjudication.

1 22. On February 17, 2026, the parties were informed that ALJ Fox was
2 unavailable to continue adjudication of the above-captioned matter and were further
3 notified that the undersigned had been assigned to preside over their scheduled further
4 hearing. The parties were tasked with choosing between commencing proceedings from
5 the beginning or having ALJ Clark review ALJ Fox's prior hearing record and presuming
6 the matter from the end of that record. The parties chose the latter option.

7 23. On February 20, 2026, the Tribunal issued a FURTHER HEARING ORDER that
8 set the above-captioned matter for further hearing at 9:00 a.m. on April 30, 2026.

9 24. On March 02, 2026, per the joint request of the parties the Tribunal issued a
10 MINUTE ENTRY that scheduled a telephonic prehearing conference for 8:00 a.m. on April
11 02, 2026.

12 25. On April 02, 2026, after the parties participated in a telephonic prehearing
13 conference in the above-captioned matter, the undersigned issued a MINUTE ENTRY that
14 contained the following information, in pertinent part:

15 The hearing issues in this matter are –

- 16 • Whether Respondent violated ARIZ. REV. STAT. § 33-1820, Bylaw Articles III-V, and
17 CC&Rs Article III Sections 2 and 5-6, and/or Article XI Sections 5 and 8. (See
18 03/15/2025 NOTICE OF HEARING and 12/29/25 AMENDED NOTICE OF HEARING for
19 specific factual allegations)

20 Correspondence was not returned as undeliverable by either party.

21 26. On April 30, 2026, further hearing was held in the above-captioned matter.

22 **THE PARTIES AND GOVERNING DOCUMENTS**

23 27. Respondent is a homeowners' association formed in March 1986, whose
24 members own properties in a residential real estate development located in Tucson,
25 Arizona.⁷ Membership for the Association is compromised of the Starpass subdivision.

26 28. Petitioner is a Starpass property owner and a member of the Association.

27 29. The Association is recognized by the State of Arizona as a domestic
28 nonprofit corporation.⁸

29 ⁷ See Agency File, Arizona Corporation Commission.pdf.

30 ⁸ *Id.*

1 30. The Association is governed by a Declaration of Covenants, Conditions,
2 and Restrictions ("Declaration") and overseen by a Board of Directors ("the Board"). The
3 Declaration empowers the Association to control certain aspects of property use within
4 the development. The Bylaws dictate how the Association operates internally, governing
5 the Board, meetings, and elections. When a party buys a residential unit in the
6 development, the party receives a copy of the Declaration and Bylaws and agrees to be
7 bound by their terms. Thus, the Declaration forms an enforceable contract between the
8 Association and each property owner, and the Bylaws outline how the Association is
9 permitted to operate.

10 31. Article III – **The Master Association**, Section 2 **Types of Membership and**
11 **Voting Rights** of the Declaration⁹ provides the following:

12 The Master Association shall have two types of Membership:

- 13 a) Type A – All Owners of Lots, excluding Declarant and Developers.
14 Type A members shall have one vote for each such Lot owned.
15 b) Type B – The Type B Membership shall be the Declarant. The
16 Declarant shall have three votes for each Lot and three votes for each
17 Planned Lot owned by the Declarant. Declarant shall also have three
18 votes for each Lot and three votes for each Planned Lot owned by a
19 Developer.

20 Each Developer who has been designated in writing by Declarant as
21 a Co-Declarant shall, at such time as Declarant no longer owns a single Lot,
22 Block, or Planned Lot anywhere from within the Annexation Land become
23 entitled to Class A membership. Each such Co-Declarant shall, at such time,
24 have one vote for each Lot and one vote for each Planned Lot owned which has
25 been annexed into the Properties. Developer shall have no votes in the Master
26 Association until such time, if at all, as set forth in this section.

27 Notwithstanding any contrary provision, in Lots for the entire
28 Annexation Land shall be computed regardless of the portion actually then
29 annexed into the Properties hereto, the total number of Lots and Planned Lots
30 for the land 2196, meaning that the votes of the Declarant for that area of
 Starpass initially is 6,588. The Declarant will have fewer votes as Lots are sold
 to the public.*

 Type B Membership shall terminate and be converted to Type A the
 earlier of:

⁹ See Agency File, Exhibits for ADRE 2025 (B).pdf.

- i) The time at which the total outstanding votes of Type A equal the total outstanding votes of Type B, or
 - ii) December 31, 2000.
- c) Co-owners must agree among themselves as to how a vote shall be case. Regardless of the number of co-owners, no more than one Type A Membership vote may be cast for each Lot.

* As an example, assume that on a given date the Block Plat has 500 Lots and 1695 Planned Lots for a total density of 2196 units. Assume that a Developer owns an unsubdivided Block having 200 Planned Lots and that another Block of land shown on the Block Plat consists of 400 Lots all of which have been sold to Lot purchasers. Assume further that the Declarant owns 100 subdivided Lots and also owns all remaining Blocks having a density of 1496 Planned Lots. The Type and Type B Membership votes entitled to be case would be as follows:

- a) The Type A votes entitled to be case would equal 400.
- b) The Type B votes entitled to be cast by the Declarant would be 5388 (200 Planned Lots owned by Developer + 100 Lots owned by Declarant + 1496 Planned Lots owned by Declarant, multiplied by 3).
- c) The Developer would have no votes in the Master Association.
- d) Any mortgagee who acquires title to a Lot pursuant to a judgement of foreclosure or a trustee's sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.
- e) If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Master Declaration succeeds to the interests of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by assignment or foreclosure or acceptance of a deed in lien thereof, shall hold the Declarant's memberships and voting rights on the same terms as they were held by Declarant.

32. Article III – **The Master Association**, Section 5 – **Articles and Bylaws** of the Declaration¹⁰ provides the following:

The manner in which the Master Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the Bylaws, the Articles of Incorporation, and this Master Declaration which shall control. The Board of Directors of the Master Association shall be elected by majority vote of the

¹⁰ *Id.*

total votes cast by the Membership at a meeting attended by a quorum as called for by the Bylaws, except that for a period of ten years from the date hereof, Declarant shall, so long as it owns a single Lot of Planned Lot in the Annexation Land, have the right to appoint the member of the Board of Directors without a meeting and without a vote of the Members, and during said ten year period no election of the Members to elect the Directors shall be had unless Declarant has in writing relinquished its right of exclusive appointment.

33. Article III – **The Master Association**, Section 6 – **Transition to Board** of the Declaration¹¹ provides the following:

Prior to the time that the operations of the Master Association are turned over to the Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Master Association, in writing, any claims or disputes with regard to the operations of the Master Association by the Declarant, maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape, or other improvements originally constructed by Declarant or the collection of assessments, maintenance and reserve accounts, and other matters falling within the realm of responsibility of the Master Association.

34. Article IX – **General Provisions**, Section 8 – **Duration and Amendment** of the Declaration¹² provides the following:

a) **Duration**. Each and every provision of this Master Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of recording of this Master Declaration, after which time this Master Declaration shall be automatically extended for successive periods of ten (10) years each unless prior to the beginning of any single ten (10) extension period, such extensions is disapproved at a regular or special meeting of the Members by the affirmative vote of at least seventy-five (75) percent of the votes of the total number of votes of the Membership.

b) **Amendment**. This Master Declaration may be amended during the first twenty-five (25) year period, and during subsequent extensions thereof, by an instrument in writing signed by: a) the President and Secretary of the Master Association not less than seventy-five percent (75%) of the total votes of the Membership, or b) the Ownors [sic] of at least seventy-five (75) percent of the Lots and Planned Lots within the Properties (except that for purposes of these sub-parts (a) and (b), a condominium unit shall be deemed to be one-half of of Lot and an apartment until one-fourth of a Lot).

Notwithstanding anything to the contrary contained in this Master Declaration:

(i) If Declaration shall determine that any amendments to this Master Declaration or any amendments to the Articles of

¹¹ *Id.*

¹² See Agency File, Exhibits for ADRE 2025 (I).pdf.

Incorporation or Bylaws of the Master Association shall be necessary in order for existing or future mortgagees, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, then Declarant shall have and hereby specifically reserves the right and power to make and execute such amendments without obtaining the approval of any Owners, Members, First Mortgagees or if any other person or entity whomsoever.

(ii) In the event this Master Declaration is recorded or used for any purpose prior to having been approved by the Veterans Administration, Federal National Mortgage Association, or Federal Housing Administration, then notwithstanding Section 10 below, Declarant shall have the absolute right to amend the provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly recorded.

(iii) No amendment to the provisions hereof may restrict, limit or eliminate any easement reserved or granted by the provisions hereof, unless Declarant consents in writing to such amendment.

35. The Declaration was amended re/recorded before the Pima County Recorder on or about November 25, 1992,¹³ December 21, 1992, February 05, 1999,¹⁴ April 29, 1994, January 31, 1995, May 29, 1997, January 01, 2007,¹⁵ and October 13, 2020.

36. Bylaws Article III – **Meeting of Members**, Section 6 - **Voting**¹⁶ provides the following:

Voting rights shall be determined as provided in the Declaration. When a vote of the Membership requires a specific percentage of votes, the percentage shall be determined by reference to the aggregate number of votes of the Membership, unless it is stated that the requisite percentage must be each type of membership.

¹³ See Agency File, Exhibits for ADRE 2025 (C).pdf.

¹⁴ See Agency File, Exhibits for ADRE 2025 (D).pdf.

¹⁵ See Agency File, Exhibits for ADRE 2025 (J-K).pdf.

¹⁶ See Agency File, Exhibits for ADRE 2025 (F).pdf.

37. Bylaws Article IV – **Board of Directors: Selection: Term of Office**, Section 1 – **Number**¹⁷ provides the following:

The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association, except that as many as nine (9) directors may serve after 60% of the Lots and Planned Lots have been sold.

38. Bylaws Article IV – **Board of Directors: Selection: Term of Office**, Section 5 – **Action Taken Without a Meeting**¹⁸ provides the following:

The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

39. Bylaws Article V – **Nomination and Election of Directors**, Section 1 – **Nomination**¹⁹ provides the following:

Except as provided in Section 2 below, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, as such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

40. Bylaws Article V – **Nomination and Election of Directors**, Section 2 – **Election**²⁰ provides the following:

Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

HEARING EVIDENCE

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

1 41. Petitioner testified on his own behalf. Frederick Christopher Ansley testified
2 on behalf of Respondent. The substantive evidence of record is as follows:

3 a. Petitioner opined that on November 18, 2012, Mr. Ansley “lost” his right to
4 appoint Board Members and argued that he continued to do so “for the last
5 twelve plus years.” Per Petitioner, the Pima County Assessor's Office
6 confirmed that only one parcel, Parcel 116-27-7840 (a reclaimed water
7 reservoir), is owned by Starpass Residential LLC. Respondent does not
8 own a lot that is currently for sale in the Starpass subdivision. The second to
9 last Lot in the Starpass subdivision was conveyed to a buyer on February
10 04, 2011.

11 i. Petitioner waived providing testimony on Issues 2 and 3.

12 b. Mr. Ansley was the developer of the Starpass subdivision and is its current
13 Declarant. Per Mr. Ansley, ALJ Moses-Thompson issued a FINAL ORDER in
14 24F-H030-REL on April 23, 2024, that addressed the same or similar issues
15 currently before the Tribunal.²¹ Mr. Ansley opined that because the FINAL
16 ORDER was not appealed by Petitioner, the legal principles of res judicata
17 and/or collateral estoppel precluded him from raising those issues now.

18 **ADDITIONAL EVIDENCE**

19 c. On June 12, 2014, the Association filed for bankruptcy before the District
20 Court of Arizona in Docket No. 14-09117.²²

21 d. On July 26, 2019, the Association again filed for bankruptcy before the
22 District Court of Arizona in Docket No. 19-09333.²³

23 **CLOSING ARGUMENTS**

24
25 ²¹ Administrative Notice is taken that 24F-H030-REL addressed a single issue: whether the Board of
26 Directors has operated autonomously for years with Declarant as its only President, operating with sole
27 authority to appoint Board Members without notice or vote in violation of ARIZ. REV. STAT. §§ 33-1804, 1810,
28 and 1817; Respondent's Bylaws Article 3, Section 1; Declaration Article III, Sec. 2(b), Article III, Sec. 5, and
29 Article XI, Section 8(b). Ultimately, ALJ Moses-Thompson held that Respondent only violated ARIZ. REV.
30 STAT. § 33-1804(B) and that the remaining statutes and governing documents pled in the petition did not bar
Mr. Ansley from appointing Board Members or operating as President of the Board.

²² See Agency File, Exhibits for ADRE 2025 (P).pdf.

²³ See Agency File, Exhibits for ADRE 2025 (O).pdf.

1 42. In closing, Respondent argued that because Petitioner became a Member
2 of the Association after the eight amendment of the Declaration was recorded, which has
3 never been legally declared invalid, and because 24F-H030-REL has never been
4 overturned, a violation of ARIZ. REV. STAT. § 33-1820 cannot exist since it is inapplicable.
5 Regarding Petitioner's remaining governing document violations, Respondent argued
6 that the doctrines of issue preclusion, waiver, lack of jurisdiction, and factual insufficiency
7 prevented Petitioner from sustaining his burden of proof.

8 43. In closing, Petitioner argued that Mr. Ansley did not own any lots in the
9 Starpass subdivision other than his personal property and therefore did not have any
10 Type B votes. Petitioner also argued that ARIZ. REV. STAT. § 33-1802, enacted in
11 September of 2024, was retroactively applicable to the Declaration's eighth (8th)
12 amendment. Petitioner beseeched the Tribunal to find that Declarant Control has ended
13 for Declarant, and direct Respondent to call a Special Meeting of the Association pursuant
14 to the Bylaws Article III- V for the sole purpose of electing a new Board of Directors by
15 votes of Type A Members only. Petitioner also requested that a Monitor or Auditor be
16 assigned to ensure that the Board of Directors election is held in accordance with the
17 Association's governing documents.

18 **CONCLUSIONS OF LAW**

19 1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV.
20 STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a
21 condominium and/or planned community association. The owner or association may
22 petition the department for a hearing concerning violations of community documents or
23 violations of the statutes that regulate planned communities as long as the petitioner has
24 filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. §
25 32-2199.05.

26 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),
27 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested
28 case at bar. OAH has the authority to interpret the contract between the parties.²⁴

29 ²⁴ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

1 3. In this proceeding, Petitioner bears the burden of proving by a
2 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1820,
3 Bylaws Articles III-V, and Declaration Article III Section 2 and 5-6, and Article XI Section
4 8.²⁵ Respondent bears the burden of establishing any affirmative defenses by the same
5 evidentiary burden.²⁶

6 4. “A preponderance of the evidence is such proof as convinces the trier of fact
7 that the contention is more probably true than not.”²⁷ A preponderance of the evidence is
8 “[t]he greater weight of the evidence, not necessarily established by the greater number of
9 witnesses testifying to a fact but by evidence that has the most convincing force; superior
10 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
11 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
12 the other.”²⁸

13 5. Declarant Control is the period during which the developer of a
14 homeowner’s association community retains the exclusive right to appoint and remove
15 the association’s Board of Directors and Officers. State law set strict maximum limits on
16 how long this control may last before transitioning to homeowner control.

17 6. ARIZ. REV. STAT. § 33-1820 provides, in pertinent parts, as follows:

18 Notwithstanding any provision in the community documents:

19 1. Each declaration that provides for a period of declarant control of the
20 association shall also provide for a date of or method for calculating the date of the
21 termination of declarant control.

22 2. For every planned community, without regard to whether the community
23 documents provide for the termination of declarant control, declarant control
24 terminates not later than the date on which the second to last lot in the planned
25 community is conveyed to a buyer.

26 3. After termination of the period of declarant control and while the declarant
27 owns one or more lots in the planned community, the association shall:

28 (a) Provide at least the same level maintenance of common areas
29 that the declarant provided.

30 (b) Not impede the declarant's ability to develop, construct and sell its
lots and not impede access to and use of common areas by the
declarant in the same manner as other members.

²⁵ See Arizona Administrative Code (“ARIZ. ADMIN. CODE”) R2-19-119.

²⁶ *Id.*

²⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

²⁸ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 7. When construing statutes, we look first to a statute's language as the best
2 and most reliable index of its meaning. If the statute's language is clear and unambiguous,
3 we give effect to that language and apply it without using other means of statutory
4 construction, unless applying the literal language would lead to an absurd result. Words
5 should be given "their natural, obvious, and ordinary meaning."²⁹ Statutes should be
6 interpreted to provide a fair and sensible result.³⁰ Unless defined by the legislature, words
7 in statutes are given their ordinary meanings.³¹ Each word, phrase, clause, and sentence
8 of a statute or rule must be given meaning so that no part will be void, inert, redundant, or
9 trivial.³²

10 8. The crux of the case at bar is whether Petitioner established that
11 Respondent's alleged conduct constitutes one or more violations of ARIZ. REV. STAT. § 33-
12 1820, Bylaws Articles III-V, and/or Declaration Article III Section 2 and 5-6, and Article XI
13 Section 8. Based upon a review of the credible and relevant evidence in the record, the
14 Tribunal finds that Petitioner has sustained his burden of proof regarding Issue 2 only.

15 9. The material facts in the case at bar are unclear as neither party presented
16 sufficient evidence to address any of the issues for hearing. Both party representatives
17 assumed facts not in the hearing record and impermissibly attempted to testify during
18 examination of adverse witnesses. Neither submitted evidence that independently
19 established or otherwise corroborated their positions. Thus, the Tribunal is left to mostly
20 rely on the referring agency's administrative record to address the hearing issues.

21 10. Overall, in these proceedings Petitioner contends that (1) Mr. Ansley has
22 maintained Declarant Control over the Association for decades by continuously amending
23 governing documents to maintain authority, (2) that the Association's 8th amendment to
24 Article III Section 2 is unenforceable because it inherently violates ARIZ. REV. STAT. § 33-
25 1820, and (3) Type B Membership has been converted to Type A Membership due to

27 ²⁹ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

28 ³⁰ *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805,
809 (1968) ("Courts will not place an absurd and unreasonable construction on statutes.").

29 ³¹ *Id.*

30 ³² See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 Declarant conveying the second to last lot to a buyer and/or due to the Association's 8th
2 amendment to Article III Section 2 being voided as unenforceable.

3 11. Based on review of the credible and relevant evidence of record, the
4 Tribunal agrees with Petitioner, in part.

5 12. Here, there is no credible evidence of record that tends to establish the
6 number of planned lots in the subdivision and/or the number of planned lots owned by the
7 Declarant by parcel number. Additionally, there is no credible evidence of record that
8 tends to establish if and/or when the second to last lot in the subdivision was sold or
9 otherwise conveyed to a buyer. However, the credible evidence of record does establish
10 that the Association's 8th amendment does not provide a date of termination or method for
11 calculating such a date. Instead, it reverts to the Association's 7th amendment which
12 identifies December 31, 2020, as the date of termination for Declarant Control. As such, a
13 violation of ARIZ. REV. STAT. § 33-1820 has been established. No other violations of law or
14 governing document(s) exist.

15 13. Notably, unless specifically stated by the Legislature, statutes are not
16 retroactively applicable to past events or actions. In other words, in Arizona statutes are
17 prospective only. Any argument to the contrary is erroneous.

18 14. Thus, the undersigned concludes that because Petitioner sustained his
19 burden of proof in this matter in part, his petition must be granted in part and denied in
20 part.

21 **FINAL ORDER**

22 In light of the foregoing,

23 **IT IS ORDERED** that Issue 2 as identified in the AMENDED NOTICE OF HEARING,
24 including the relief requested by Petitioner, is granted.

25 **IT IS FURTHER ORDERED** that Issues 1 and 3 as identified in the NOTICE OF
26 HEARING and AMENDED NOTICE OF HEARING, including the relief requested for each by
27 Petitioner, are denied and dismissed with prejudice.

28 **IT IS FURTHER ORDERED** that Respondent shall reimburse a portion of
29 Petitioner's filing fee, totaling \$500.00 (five hundred dollars), as required by ARIZ. REV.
30 STAT. §§ 32-2199.01-02.

IT IS FURTHER ORDERED that Respondent shall henceforth abide by ARIZ. REV. STAT. § 33-1820.

IT IS FURTHER ORDERED that no civil penalties shall be levied against Respondent as a result of these proceedings.

IT IS FURTHER ORDERED that each party bears its own costs related to preparation and litigation of this matter.

NOTICE

Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this FINAL ORDER is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04. Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Arizona Department of Real Estate within thirty (30) days of the service of this FINAL ORDER upon the parties.³³

Done this day, June 11, 2026.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate
100 N. 15th Ave., Ste. 201
Phoenix, AZ 85007
snicolson@azre.gov
mneat@azre.gov
lrecchia@azre.gov
labril@azre.gov
vnunez@azre.gov
gosborn@azre.gov
dmorehouse@azre.gov

Michael J. Schmidt, Petitioner

³³ See <https://azre.gov/sites/default/files/2025-07/Dispute%20Rehearing%20Request%20Form.pdf>.

1 2093 S. Twinkling Starr Dr.
2 Tucson, AZ 85745
3 mjschmidt03@gmail.com

4 Starrpass Master Homeowners Association, Inc., Respondent
5 c/o Chris Ansley, Agent
6 3702 W. Tohono Crossing Pl.
7 Tucson, AZ 85745
8 cansley@devconllc.com

9 By: OAH Staff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30