

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

Karen and Marenis Kansfield

Petitioners,
vs.

Del Webb at Dove Mountain Community
Association, Inc.

Respondent.

No. 26F-H045-REL

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: July 6, 2026

APPEARANCES: Karen Kansfield appeared on behalf of herself. Marenis Kansfield appeared on behalf of himself. Jason Smith, Esq. appeared on behalf of Del Webb at Dove Mountain Community Association, Inc. (Del Webb).

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

EXHIBITS ADMITTED INTO EVIDENCE: Exhibits 1 through 7 submitted by Karen and Marenis Kansfield. Exhibits A through C submitted by Del Webb.

FINDINGS OF FACT

1. The Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona. Homeowners' associations and their members are governed by Chapter 16 of Title 33, the Planned Communities Act, A.R.S. §§ 33-1801 to 33-1818.

1 2. Del Webb is a homeowners' association whose members own single-family
2 houses or lots in the Del Webb at Dove Mountain development in Marana, Arizona.

3 3. Karen and Marenis Kansfield (the Kansfields) are members of Del Webb.

4 4. On or about January 22, 2026, the Kansfields filed a petition with the
5 Department. Through the Petition, the Kansfields alleged that Del Webb violated Article
6 II, Sections 2.1, 2.2, Article III, Section 3.2, and Article XII Section 12.4 of its CC&Rs
7 when Del Webb, "forcefully ordered the Kansfields to leave the community center
8 without cause." Kansfields also alleged that Del Webb violated Article IV Section 4.2 of
9 its CC&RS when it failed to suspend the rights of the Kansfields before ordering the
10 Kansfields to leave the community center.

11 5. The matter was referred to the Office of Administrative Hearings for an
12 evidentiary hearing.

13 6. On June 2, 2026, the Department issued a Notice of Hearing setting the
14 petition for hearing on July 6, 2026. The Notice of Hearing provided that the dispute was
15 whether Del Webb violated its Covenants, Codes, and Restricts (CC&Rs) when it forced
16 the Kansfields to leave the Recreational Facilities and Common Area without cause.
17 See the NOTICE OF HEARING.

18 7. A hearing was held on July 6, 2026.

19 8. At hearing, Karen Kansfield testified on her own behalf. Marenis Kansfield
20 testified on his own behalf. Mrs. Kansfield presented the testimony of Carol Secott,
21 Gloria Phillips, Stacy Brown and Mitch Allen.

22 9. Article II, Section 2.1¹ of Del Webb's CC&Rs provides that every owner has
23 the right and nonexclusive easement of use, access, and enjoyment in and to the
24 Common Area, subject to Section 2.2 and other provisions.

25 10.. Article II, Section 2.2 of Del Webb's CC&Rs provides that every owner has a
26 non-exclusive right to use and enjoy the Recreational Facilities subject to provisions of
27 the Declaration.

28 11.. Article III, Section 3.2 of Del Webb's CC&Rs provides that every owner is a
29 member of Del Webb.

30 ¹ Del Webb's CC&Rs are provided in the petition at pages 3 to 87.

1 12. Article IV, Section 4.2 of Del Webb's CC&Rs provides that Del Webb's Board
2 may impose sanctions for violations of the CC&Rs, including, but no tlimited to, the
3 suspension of rights.

4 13. Article XII, Section 12.4(a) of Del Webb's CC&Rs provides that Del Webb's
5 Board nor members may adopt any rule that violates the following provision:

6 Similar Treatment. Similarly situated Owners (other than Declarant) and
7 occupants of Dwelling Units shall be treated similarly.

8 14. The evidence presented at hearing showed that prior to the day of a
9 Christmas party hosted by Del Webb on December 5, 2025, the Kansfields decided to
10 attend, but the event was sold out. Mrs. Secott informed Mrs. Kansfield that Mrs. Secott
11 and her husband were unable to attend the party because Mrs. Secott was ill. Mrs.
12 Basin told the Kansfields that they could go attend the party in their place. Ms. Basin
13 sent a text message to Mrs. Kansfields instructing the Kansfields to pretend as if they
14 were the "Secotts." See Exhibit A.

15 15.. On the night of the party, the Kansfields arrived and told Gloria Phillips, a
16 member of the Board's social committee, that they were attending in the place of the
17 Secotts. The Kansfields entered the party. When Barb Thurman saw that the Kansfields
18 were present, she told them to leave because their names were not on the list and the
19 Kansfields had not purchased tickets to the event. Mr. Kansfield testified at hearing that
20 Ms. Thurman told the Kansfields to "Get out" and Ms. Thurman threatened to call the
21 police. Ms. Allen, a Del Webb employee, testified that Ms. Thurman only threatred to call
22 the police after Mr. Kansfield said, "I would like to see you put me out."

23 16.. Before the Kansfields left the party, Ms. Thurman followed them to the
24 parking lot and told them that they were allowed to stay. Ms. Allen stated at hearing that
25 Ms. Thurman did not know that the Kansfields were attending in place of the Secotts,
26 originally. However, the Kansfields chose not to re-enter the party.

27 17.. Ms. Phillips testified at hearing that tickets could not be transferred. The
28 Administrative Law Judge (ALJ) finds that Exhibit A offered by Del Webb shows
29 corroborated Ms. Phillips's testimony because Ms. Secott instructed the Kansfields to
30 "pretend" as if they were the Secotts.

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CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violation of planned community documents under that authority Title 33, Chapter 16.² Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. The Kansfields bear the burden of proof to establish that Respondent violated its CC&Rs by a preponderance of the evidence.³ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁴

3. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁵ A preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁶

4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give effect to the intent of the parties.⁷ “Restrictive covenants must be construed as a whole and interpreted in view of their underlying purposes, giving effect to all provisions contained therein.”⁸

5. “It is well settled that when, due to circumstances beyond the control of the parties the performance of a contract is rendered impossible, the party failing to perform is exonerated.” See *Garner v. Ellingson*, 18 Ariz. 181, 182 (App. 1972) citing *Whelan v. Griffith Consumers Company*, 170 A.2d 229, 230 (D.C. App., 1961).

² See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development’s CC&Rs.

³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ See A.A.C. R2-19-119(B)(2).

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

⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁷ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

⁸ *Lookout Mountain Paradise Hills Homeowners’ Ass’n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

Article II, Sections 2.1 and 2.2

6. The preponderance of the evidence presented at hearing shows that the social committee of Del Webb's Board adopted a rule that purchased tickets cannot be transferred to others. There was no evidence presented at hearing that Ms. Phillips, a member of the social committee, has authority to change the rule. It was undisputed that the Kansfields did not purchase tickets to the party. Therefore, Del Webb did not violate Article II, Sections 2.1 or 2.2 when its employee, Barb Thurman, told the Kansfields to leave the party. There was insufficient evidence presented at hearing to establish the reason that Ms. Thurman allowed the Kansfields to re-enter the Christmas party. However, the preponderance of the evidence shows that Del Web did not allow tickets to be transferred.

Article II, Section 3.2

7. Del Webb did not dispute that the Kansfields are members of Del Webb. The Kansfields provided no evidence to establish that Del Webb violated Article II, Section 3.2.

Article IV, Section 4.2

8. The ALJ concludes that Del Webb did not violate Article IV, Section 4.2 of its CC&Rs, because that section does not imposes a duty on Del Webb to issue sanctions, but rather, the statute gives Del Webb discretion to impose sanctions for violations of the CC&Rs. Furthermore, Del Webb was not required to suspend the rights of the Kansfields under Article II, Sections 2.1 and 2.2, before requiring that the Kansfields leave the Christmas party.

Article XII, Section 12.4(a)

9.. The Kansfields failed to establish at hearing nor did the Kansfields allege that Del Webb allowed another member to attend the Christmas party who had not purchased a ticket. The Kansfields have not established that Del Webb treated similarly situated owners differently.

10.. Upon consideration of the evidence presented at hearing, the ALJ concludes that the Kansfields have failed to meet their burden to establish that Del Webb violated its CC&Rs. While the ALJ sympathizes with the way that the Kansfields

1 were treated at the 2025 Christmas party, there was no evidence presented that Del
2 Webb's actions violated the provisions of the CC&Rs cited in the petition.

3 11. Accordingly, because the Kansfields have failed to meet their burden, the
4 ALJ is compelled to dismiss the petition.

5 **RECOMMENDED ORDER**

6 **IT IS ORDERED** that the petition filed by Karen and Marenis Mansfield is
7 dismissed.

8 **NOTICE**

9 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
10 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
11 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
12 **must be filed with the Commissioner of the Department of Real Estate**
13 **within 30 days of the service of this Order upon the parties.**

14 Done this day, July 27, 2026.

15 /s/ Velva Moses-Thompson
16 Administrative Law Judge

17 Transmitted by either mail, e-mail, or facsimile July 27, 2026 to:

18 Susan Nicolson
19 Commissioner
20 Arizona Department of Real Estate

21 Karen and Marenis Kansfield
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26 By: OAH Staff
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