

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 In the Matter of:

**No. 26F-H009-REL**

3 David Malone

**ADMINISTRATIVE LAW JUDGE  
DECISION**

4  
5           PETITIONER,  
6 vs.

7 Skyranch Aircraft Storage Condominium  
8 Association

9           RESPONDENT.

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10           **HEARING:** August 3, 2026

11           **APPEARANCES:** David Malone (Mr. Malone) appeared on behalf of himself. Timothy  
12 McCulloch, Esq. appeared on behalf of Skyranch Aircraft Storage Condominium  
13 Association (Skyranch).

14           **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

15           **EXHIBITS ADMITTED INTO EVIDENCE:** Exhibits A through D submitted by  
16 Skyranch. Exhibits 1 through 3 submitted by Mr. Malone.

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18                                   **FINDINGS OF FACT**

19           1.       On June 28, 2022, the Arizona Department of Real Estate (Department)  
20 issued a Notice of Hearing setting the above-captioned matter for hearing at the Office  
21 of Administrative Hearings.

22           2.       A hearing was held on August 3, 2026.

23           3.       At hearing, Mr. Malone testified on behalf of himself. Skyranch presented  
24 no witness testimony.

25           4.       On or about December 18, 2025, Mr. Malone filed a petition with the  
26 Department that provided, in relevant part, as follows:

27           .....

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29           On Oct 5, 2025, and again on Oct 15, 2025, I requested copies of the audio  
30 recording of the Board meeting held on Sep 9, 2025. More than ten weeks have

1 now passed, and no requested copies have been provided. A formal demand  
2 was also sent on November 20, 2025.

3 On December 17, 2025, I received correspondence from an attorney claiming to  
4 represent the Board, stating the requested recordings "no longer exist." This  
5 admission is concerning, as my written requests were submitted well within the  
6 six month statutory retention period established under Arizona law.

7 If the recordings were deleted after my request, such deletion would constitute a  
8 direct violation of ARS 33-1248. If the recordings were never retained, that also  
9 constitutes a violation of Arizona law.

10 Additionally, the Board failed to respond within the 10 day timeframe required  
11 under ARS 33- 1258. Their attorney's response did not deny my early October  
12 requests. His response failed to provide statutory justification, explanation  
13 regarding destruction, timing, or preservation procedures, and does not cite any  
14 legal defense for the absence of these recordings.

15 .....

16 5. The evidence at hearing showed that on October 5, 2025, Mr. Malone  
17 requested a copy of the audio recording of the September 2025 board meeting.

18 6. On October 15, 2025, Mr. Malone requested a copy of the audio recording  
19 of the September 2025 board meeting.

20 7. On November 25, 2025, Mr. Malone requested copies of the audio  
21 recordings of the September 2025, October 2025, and November 2025 board meetings.

22 8. The Board denied that it received the October 5, 2025, and October 15,  
23 2025 requests for a copy of audio recording of the September 2025 board meeting.

24 9. On December 17, 2025, Skyranch provided Mr. Malone with a copy of the  
25 audio recording of the November 2025 board meeting.

26 10. On March 10, 2026, Skyranch provided Mr. Malone with a copy of the  
27 audio recording of the September 2025 board meeting.

28 11. Skyranch informed Mr. Malone that a copy of the October 2025 board  
29 meeting no longer existed.

## 30 **CONCLUSIONS OF LAW**

1. A.R.S. section 32-2199(1) permits a condominium unit owner to file a petition with the Department for a hearing concerning the condominium association's alleged violations of the Condominium Act set forth in Title 33, Chapter 9. This matter lies within the Department's jurisdiction.

2. Mr. Malone bears the burden of proof to establish that Sky ranch violated the A.R.S. section 33-1243(J) by a preponderance of the evidence.<sup>1</sup> Sky ranch bears the burden to establish affirmative defenses by the same evidentiary standard.<sup>2</sup>

3. A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”<sup>3</sup> 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.”<sup>4</sup>

4. Under A.R.S. section 33-1248(A), the Board must keep a copy of the recording of an open board meeting for at least six months and provide a copy of the recording to any member upon request in compliance with A.R.S. 33-1258. It is undisputed that Skyranch failed to maintain a copy of the October 2025 board meeting.

5. Under A.R.S. section 33-1258(A), Skyranch must fulfill a request for a request for a copy of a record within 10 business days. It is undisputed that Skyranch did not fulfill Mr. Malone's requests for copies of the Board's audio recordings of the September and November Board meetings within 10 business days of his requests.

6. Mr. Malone has established by a preponderance of the evidence that Sky ranch violated A.R.S. sections 33-1248(A) and 33-1258(A).

7. Therefore, the petition should be granted.

<sup>1</sup> See 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).

<sup>2</sup> See A.A.C. R2-19-119(B)(2).

<sup>3</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>4</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

**ORDER**

**IT IS ORDERED** that Mr. Malone be deemed the prevailing party in this matter.

**IT IS FURTHER ORDERED** that Sky ranch pay Mr. Malone his filing fee of \$500.00, to be paid directly to Mr. Malone within thirty (30) days of this Order.

**IT IS FURTHER ORDERED** Sky ranch is directed to comply with the requirements of A.R.S. 33-1248(A) and 33-1258(A) going forward.

**IT IS FURTHER ORDERED** that all other requests for relief are denied.

No Civil Penalty is found to be appropriate in this matter.

**NOTICE**

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

Done this day, August 24, 2026.

/s/ Velva Moses-Thompson  
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile August 24, 2026 to:

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Arizona Department of Real Estate - HOA

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By: OAH Staff