

1 **Final agency action regarding decision below:**

2  
3 **ALJFIN ALJ Decision final by statute**

4  
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 Gary W. Moselle,  
8 Petitioner

**No. 18F-H1817005-REL**

9 vs.

**ADMINISTRATIVE LAW JUDGE  
DECISION**

10 Desert Mountain Master Association,  
11 Respondent

---

12 **HEARING:** November 17, 2017

13 **APPEARANCES:** Petitioner Gary W. Moselle appeared on his own behalf.  
14 Respondent Desert Mountain Master Association was represented by Curtis Ekmark.

15 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

---

16  
17 **FINDINGS OF FACT**

18 1. Desert Mountain Master Association (Respondent or DMMA) is an  
19 association of homeowners located in Scottsdale, Arizona.

20 2. On or about September 1, 2017, Gary W. Moselle (Petitioner) filed a petition  
21 with the Arizona Department of Real Estate (Department), alleging that Respondent had  
22 violated the provisions of A.R.S. Title 33, Chapter 16, Sections 33-1801 to 33-1818.  
23 Petitioner specifically alleged, in relative part, as follows:

24 Chair of the Communications Committee, Desert Mountain Master  
25 Association (DMMA), alleges that a scheduled meeting of his committee is  
26 "closed," open only to committee members, and not subject to Arizona's  
27 open meeting statute. DMMA is an Arizona Planned Unit Development,  
governed by A.R.S. Title 33, Chapter 16, Sections 33-1801 to 33-1818.

28 3. On or about September 5, 2017, the Department issued a notice to  
29 Respondent regarding the petition.

30 4. On or about September 6, 2017, the DMMA Communications committee  
held a closed meeting that Petitioner was not allowed to attend.



1 A. Notwithstanding any provision in the declaration, bylaws or other  
2 documents to the contrary, all meetings of the members' association and  
3 the board of directors, and *any regularly scheduled committee meetings*,  
4 are open to all members of the association or any person designated by a  
5 member in writing as the member's representative and all members or  
designated representatives so desiring shall be permitted to attend and  
speak at an appropriate time during the deliberations and proceedings.

6 . . . .  
7 F. It is the policy of this state as reflected in this section that all meetings of  
8 a planned community, whether meetings of the members' association or  
9 meetings of the board of directors of the association, be conducted openly  
10 and that notices and agendas be provided for those meetings that contain  
11 the information that is reasonably necessary to inform the members of the  
12 matters to be discussed or decided and to ensure that members have the  
13 ability to speak after discussion of agenda items, but before a vote of the  
14 board of directors or members is taken. Toward this end, any person or  
15 entity that is charged with the interpretation of these provisions, including  
16 members of the board of directors and any community manager, shall take  
17 into account this declaration of policy and shall construe any provision of  
18 this section in favor of open meetings.

19 Emphasis added.

20 5. Petitioner asserted that because the September 6, 2017 meeting was  
21 scheduled in a normal manner, that meant that the meeting was “regularly scheduled” and  
22 subject to the open meetings law. Petitioner also pointed to the policy statement in A.R.S.  
23 § 33-1804(F) that “all meetings” be conducted openly in support of his assertion that the  
24 September 6, 2017 DMMA Communications committee meeting should have been open  
25 to the members.

26 6. Respondent argued that the phrase “regularly scheduled” in the statute  
27 meant that the meetings occurred at regular intervals, such as on the third Thursday of  
28 every month, quarterly, or even annually, and that because the DMMA Communications  
29 committee met so infrequently and without any established interval, the committee did not  
30 have “regularly scheduled” meetings that would render it subject to the open meetings  
law.

7. The Administrative Law Judge concludes that that the DMMA  
Communication committee does not hold regularly scheduled meetings, and therefore is  
not subject to the open meetings law. As such, the determination that the DMMA

1 Communication committee was not open to the members was not a violation of A.R.S. §  
2 33-1804.

3 **ORDER**

4 IT IS ORDERED that Petitioner's petition is denied.

5 **NOTICE**

6  
7 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a**  
8 **rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 41-**  
9 **1092.09, a request for rehearing in this matter must be filed with the**  
10 **Commissioner of the Department of Real Estate within 30 days of the service of**  
11 **this Order upon the parties.**

12  
13 Done this day, December 7, 2017

14  
15 /s/ Tammy L. Eigenheer  
16 Administrative Law Judge

17  
18  
19 Transmitted electronically to:

20  
21 Judy Lowe, Commissioner  
22 Arizona Department of Real Estate