



# Arizona Department of Real Estate (ADRE)

Homeowners Association Dispute Resolution

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100 North 15<sup>th</sup> Avenue, Suite 201, Phoenix, Arizona 85007

DOUGLAS A. DUCEY  
GOVERNOR

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LOUIS DETTORRE  
COMMISSIONER

JAN 25 2022

AZ Dept. of Real Estate

## HOMEOWNERS ASSOCIATION (HOA) DISPUTE PROCESS PETITION

**LEGAL ACTION (Complete this section with the Attorney's information if the Petitioner is being represented on this matter.)**

Does an attorney represent you in this matter? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Has a lawsuit been filed regarding this matter? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Attorney Name:		Law Firm:	
Address:	Suite:	City:	State: Zip Code:
Office Phone:	Fax:	Email address:	

**INVOLVED PARTIES (An owner's petition (complaint) must be about a dispute between the owner and the association. An association's petition (complaint) must be about a dispute between the association and the owner.)**

<b>PETITIONER IS A (check one)</b> <input checked="" type="checkbox"/> Homeowner <input type="checkbox"/> Condominium/Community Association <input type="checkbox"/> Planned Community Association	<b>RESPONDENT IS A (check one)</b> <input type="checkbox"/> Homeowner <input checked="" type="checkbox"/> Condominium/Community Association <input type="checkbox"/> Planned Community Association
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**RESPONDENT INFORMATION (Respondent may not be a management company but may be addressed in care of one.) The Respondent is the person or association against whom action or relief is sought, or who opposes the petition.**

Homeowner (Last, First & M.I.) or Association Name: <b>The Villages at Aviano Condominium Association</b>			
Address:	City:	State:	Zip Code:
<b>c/o PMG Services 1839 S. Alma School Rd, Suite 150</b>	<b>Mesa</b>	<b>AZ</b>	<b>85210</b>
Best Phone Contact: <b>480-829-7400 ext.2218 (Natasha Decoto)</b>		Email address: <b>ndecoto@pmg-service.com</b>	

**PETITIONER (YOUR NAME AND ADDRESS) The person or association completing this form is the Petitioner.**

Homeowner (Last, First & M.I.) or Association Name: <b>Jouxson, Arleen D.</b>			
Address:	City:	State:	Zip Code:
<b>3935 E. Rough Rider Rd, Unit 1369</b>	<b>Phoenix</b>	<b>AZ</b>	<b>85050</b>
Best Phone Contact: <b>808-372-0488</b>		Email address: <b>jouxsonmeyers@outlook.com</b>	

**ADDRESS OF SUBJECT PROPERTY (If different than the Petitioner's mailing address)**

Address:	City:	State:	Zip Code:
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**COMPLAINT (DO NOT LEAVE THIS SECTION BLANK)**

<b>This complaint is a violation of: (Check box and provide the reference of the alleged violation/s. THIS MUST BE COMPLETED.)</b>	
<input checked="" type="checkbox"/>	Condominium Statutes (example. A.R.S. § 33-1243): <u>A.R.S. 1243.B.</u>
<input type="checkbox"/>	Planned Community Statutes (example. A.R.S. § 33-1809(A)(1)): _____
<input checked="" type="checkbox"/>	Bylaws (Example: Article 4.1(a)): <u>Article 3 §3.1 and §3.9.</u>
<input checked="" type="checkbox"/>	CC&Rs (Example: Article 4, Sec. 4.1): <u>Declaration Article 6 §6.2.</u>

**NUMBER OF ISSUES CLAIMED IN THIS PETITION**

<input type="checkbox"/>	1 \$500
<input checked="" type="checkbox"/>	2 \$1,000
<input type="checkbox"/>	3 \$1,500
<input type="checkbox"/>	4 \$2,000

**REVIEWED**  
By ADRE at 8:53 am, Jan 26, 2022







**ALLEGED VIOLATION DESCRIPTION - NARRATIVE STATEMENT**

**PETITION FOR HEARING BEFORE THE ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS ("OAH") TO DETERMINE:**

**ISSUE #1:** Whether the agreement to seat Eloise Figueroa ("Figueroa") and Linda Bahr ("Bahr") on the Board of Directors ("BOD") by The Villages at Aviano Condominium Home Owners Association ("HOA") without an election by the Association membership was an action prohibited by: the Bylaws Article 3 §3.1.<sup>1</sup>; the Declaration Article 6 §6.2.<sup>2</sup>; and A.R.S. 33-1243.B.<sup>3</sup>, and should therefore be nullified?

**ISSUE #2:** Whether it was impermissible to conduct and transact business at the Special Board Meeting on June 25, 2021 without a quorum present required by Bylaws Article 3 §3.9.<sup>4</sup> and should therefore be nullified?

**BACKGROUND INFORMATION:**

1. **Petitioner** is Arleen D. Jouxson, the owner of Unit 1369 at The Villages at Aviano Condominium located at: 3935 E Rough Rider Road, Phoenix, Arizona 85050  
Her phone number is: 808-372-0488 (cellular)  
Her Email address is: [jouxsonmeyers@outlook.com](mailto:jouxsonmeyers@outlook.com)
  
2. **Respondent** is The Villages at Aviano Condominium Association  
Address: c/o PMG Services  
1839 S. Alma School Road, Suite 150  
Mesa, Arizona 85210  
Phone: 480-829-7400 ext.2218  
Fax: 480-350-9293

There are 392 condominium residential units in The Villages at Aviano Condominium.

3. **Community Managers:**
  - a. PMG Services ("PMGS") is the current community management company contracted by Figueroa and Bahr to provide certain management services to the HOA from July 15, 2021 and then the full scope of management from August 1, 2021.  
Community Manager: Natasha DeCoto, CMCA  
Email address: [ndecoto@pmg-service.com](mailto:ndecoto@pmg-service.com)

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<sup>1</sup> **Bylaws Article 3 §3.1.** states in relevant part: "Unit owners shall elect the Board of Directors"

<sup>2</sup> **Declaration Article 6 §6.2.** states in relevant part: "Unit owners shall elect the Board of Directors"

<sup>3</sup> **A.R.S. 33-1243.B.** states in relevant part: "The Board of Directors shall not act on behalf of the Association to . . . elect members of the board of directors"

<sup>4</sup> **Bylaws Article 3 §3.9.** states in relevant part: "A majority of the prescribed number of directors shall constitute a quorum for the transaction of business."

- b. Brown Community Management, Inc. ("BCMI") was contracted by the HOA From March 1, 2021 until July 15, 2021 to provide its community management services:

Address: Brown Community Management, Inc.  
7255 E. Hampton Avenue, Suite 101  
Mesa, Arizona 85209

Phone: 480-539-1396

Community Managers: Michael Sgro from March 1, 2021 until he left BCMI's employment sometime after April 30, 2021 and was replaced by Marshall Chess.  
Marshall Chess Email address: [Marshall.Chess@brownmanagement.com](mailto:Marshall.Chess@brownmanagement.com)  
Michael Sgro Email address: [Michael.sgro@brownmanagement.com](mailto:Michael.sgro@brownmanagement.com)

**4. Board of Directors:**

The Villages at Aviano Condominium Association is governed by a Board of Directors.

- a. Until April 8, 2021 the HOA BOD comprised three directors. Board composition was increased to five directors at a Special Board Meeting held on April 8, 2021:

Tony Basuini (President)

Tony Basuini was on the board prior to commencement of this dispute, becoming president when Helen Himes and Michael Portnoy resigned.

As of the time of filing this Petition, Tony Basuini's position has been reduced from president to member-at-large.

Joseph Orr

Tony Basuini appointed Joseph Orr to replace one of the resigning directors.

Tony Cancilla

Tony Basuini and Joseph Orr appointed Tony Cancilla to replace the second resigning director at a Special Board Meeting on April 30, 2021

The two remaining BOD seats have remained unfilled.

- b. After execution of the Settlement Agreement entered into by Tony Basuini on behalf of the Association and by Figueroa on her own behalf on or around June 22, 2021:

Eloise Figueroa and Linda Bahr took their seats on the board pursuant to paragraph 1. of the "IT IS HEREBY AGREED" section of the Settlement Agreement; Tony Basuini remained on the board, but as director-at-large, not president; and the appointments of Joseph Orr and Tony Cancilla were terminated. The two remaining seats remain unfilled.

**5. Chronology of Relevant Events:**

- a. The HOA, through its management company, BCMI, called the Annual Member Meeting and Election of the BOD to be held on April 13, 2021;

- b. On April 8, 2021, Tony Basuini and Joseph Orr expanded the composition of the BOD from three to five members;
- c. The HOA BOD comprising Tony Basuini and Joseph Orr canceled the election on April 13, 2021;
- d. On April 27, 2021, Figueroa filed a lawsuit in the Maricopa Superior Court against the HOA to enforce her being seated on the board despite cancelation of the election:  
     Eloise Figueroa vs Villages at Aviano Condominium Association  
     CV2021-006916;
- e. On April 30, 2021, Tony Basuini and Joseph Orr appointed Tony Cancilla to the BOD to replace one of the departing board members;
- f. The HOA negotiated an agreement with Figueroa to seat her on the board despite that no election had taken place, namely, the Settlement and Mutual Release of Claims ("Settlement Agreement");
- g. The HOA kept details of the lawsuit and terms of the Settlement Agreement secret from Association members;
- h. Without input from Owners during the negotiation of the Settlement Agreement, the HOA filed a notice of settlement with the court on May 27, 2021;
- i. Based on h. above, the Court dismissed the lawsuit with prejudice on June 22, 2021. It appears the Court did not review the Settlement Agreement on its merits, just the fact that settlement had been reached;
- j. Figueroa called a Special Board Meeting to be held on June 25, 2021. Quorum for the transaction of business was not achieved at the meeting. Figueroa and Bahr were the only two present out of a five-member board. Nonetheless, they proceeded with the meeting and appointed themselves to the board, Figueroa as President/Treasurer and Bahr as Vice-President/Secretary and demoted Tony Basuini, former President, to Director/Member. In addition, they adopted several controversial measures. In an emailed Notice of Meeting to all Association Members, BCMI warned Figueroa and Bahr that they did not have quorum to proceed with the meeting. Despite the warning, Figueroa went ahead with the meeting.

**6. Petitioner's Pursuit of Settlement with the HOA:**

- a. Around the period immediately preceding the April 13, 2021 election cancelation, Petitioner communicated concerns to BCMI and the HOA's legal counsel about ongoing election practices that she deemed to be unfair. Petitioner made several attempts, through email correspondence with Michael Sgro to persuade the HOA to address the procedural irregularities perceived and to save the election.
- b. Board President Tony Basuini and Board Member Joseph Orr canceled the election on April 13, 2021 and promised that a new election would be held.
- c. The new election never came.
- d. Once Figueroa filed her lawsuit against the HOA on April 27, 2021, the HOA ceased providing Petitioner and other owners, on a pretext of confidentiality, any information regarding the lawsuit or its disposition. On or around May 27, 2021, Petitioner learned only that the lawsuit had been settled under confidential terms. Without more information, Petitioner was left to trust that these confidential terms represented the best interests of Petitioner and the Association membership.
- e. The Settlement and Mutual Release of Claims, which memorialized the agreement the HOA made with Figueroa to seat her and Bahr on the BOD, was also withheld from Petitioner. Thus, at the time, Petitioner was unaware that the terms of settlement encompassed an agreement to seat Figueroa

and Bahr on the BOD without an election by Association members. In fact, Petitioner was also never informed what the legal basis of Figueroa filing the lawsuit against the HOA was.

- f. A possibility of reconciliation was substantially undermined when on June 25, 2021, Figueroa and Bahr appointed themselves to the BOD at the June 25, 2021 Special Board Meeting they called and conducted without a quorum of the board attending.
- g. It was not until September 2021 that the Settlement Agreement emerged into the sunlight and Petitioner became aware that the HOA had negotiated an agreement with Figueroa to seat her and Bahr on the BOD without election by Association members.
- h. By then, Petitioner considered it moot to try to settle the matter with the new and emboldened HOA which was already entrenched since June 25, 2021.

### **RELEVANT FACTS AND QUESTIONS:**

Upon information and belief, Petitioner states the following:

1. **Governance:** The Villages at Aviano Condominium Association is governed by:
  - a. The Articles of Incorporation (Exhibit 1)
  - b. The Condominium Declaration (Exhibit 2)
  - c. The Bylaws (Exhibit 3)
  - d. The Arizona Condominium Statutes, Title 33, Chapter 9, Section 33-1201 et seq
2. **The HOA agreed to seat Figueroa and Bahr on the BOD without an election:**
  - a. Pursuant to the Settlement and Mutual Release of Claims (“Settlement Agreement”) (Exhibit 4) executed by Tony Basuini on behalf of the HOA and Figueroa on her own behalf, the HOA agreed to seat Figueroa and Bahr on the board in accordance with Paragraph 1. of the Agreement entitled, Outcome of 2021 Election.
  - b. Paragraph 1. States: ***“The Association acknowledges and hereby certifies that Figueroa and Bahr are the two candidates receiving the highest number of votes in the 2021 annual election, and therefore, are elected to the Board of Directors. Upon the Parties’ execution of this Agreement and dismissal of the litigation, which shall not be unreasonably delayed or protracted, Figueroa and Bahr will take their seats as board members.”***
  - c. By agreeing with and certifying to Paragraph 1., the HOA acted impermissibly on behalf of the Association to seat Figueroa and Bahr on the BOD without an election in violation of A.R.S. 33-1243.B.
  - d. The veracity of Paragraph 1. relies largely on the premise that an election took place, but the evidence clearly shows that **an election never happened.**
    - On March 17, 2021 the HOA, through its community manager BCMI, notified owners eligible to vote in the election by mail and email (if address available) that the Annual Meeting of the Membership would take place on April 13, 2021 at 6:00 pm. (Exhibit 5)
    - The Notice included an Agenda (Exhibit 5 page 3) which noted that Item IX. would be devoted to election of board members:
      - IX. ELECTION
      - A. EXPLANATION OF ELECTION
      - B. NOMINATIONS FOR THE BOARD OF DIRECTORS
      - C. APPOINT INSPECTORS OF THE ELECTION

#### D. CAST BALLOTS FOR ELECTION

- The Meeting Notice included an ABSENTEE BALLOT (Exhibit 5 page 2) which clearly prescribed the manner in which voters should complete and deliver their ballot to BCMI in order for it to be counted: “**Once you** (underscored for emphasis) **have completed your ballot, please mail, fax or email it to The Villages at Aviano Condominium Association to be received by BCMI before 3:00 pm on April 13, 2021.**” (addresses provided.) “Ballots will also be accepted at the meeting no later than 6:00 pm.”
- On April 13, 2021, Tony Basuini and Joseph Orr, the board members presiding over the Annual Member Meeting and the election (agenda item IX.), canceled the election immediately upon Tony Basuini calling the meeting to order.
- Paragraph 1. refers to “**the 2021 annual election**” as if it actually took place, when the HOA BOD knew that an election had not taken place. Petitioner attended the April 13, 2021 meeting and witnessed Tony Basuini and Joseph Orr canceling the election apparently due to irreparable issues of unfairness, and to assure candidates for the two newly opened board positions a fair and open election process.
- Respondent, in defense of paragraph 1. has made the fallacious argument that the election could not be canceled due to lack of quorum to conduct the meeting. The April 13, 2021 meeting was the 2021 Annual Member Meeting and the quorum requirement of 10% of owners attending was more than adequately met by the 81 Absentee Ballots (Exhibit 11) returned to BCMI by the assigned deadline. According to A.R.S. 33-1250.D. “*Votes cast by Absentee Ballot are valid for the purpose of establishing quorum.*” It is not necessary to give further credence to Repondent’s fallacious quorum argument but to say that if the election could not be canceled, so could the election not take place at the April 13, 2021 meeting. Furthermore, Tony Basuini and Joseph Orr did not state that the election would not be held for lack of quorum.
- Recent email correspondence with Marshall Chess, current BCMI community manager, has confirmed that the April 13, 2021 meeting **was** canceled. In his email he states: “*I’ve since gotten a clarification on why we lack minutes from the 2021 Annual Meeting. President Tony cancelled it as it was scheduled to start; **it never took place.***” Therefore, since minutes are not required for a canceled election or meeting, no minutes were recorded for April 13, 2021. (Exhibit 10)
- Further proof that an election did not take place:
  - The BOD could have adjourned the April 13, 2021 meeting to a future date and time, an option afforded it by Article 2 §2.3 of the Bylaws, but it did not.
  - If quorum was really at issue, the BOD could have sent a Notice to owners entitled to vote, after Tony Cancilla was appointed to the BOD on April 30, 2021, to reconvene and complete the election. The BOD did not do this either.
  - Furthermore, the HOA could not legitimately contend that it completed the election process without a meeting of the members taking place because Bylaws Article 2 §2.1 and Bylaws Article 3 §3.2 require that an Annual meeting of the Members be held once every year and that the Members elect the board of directors at the Annual meeting. No Annual meeting was held in 2021, nor did the HOA notify members about results of any election.
- e. The Absentee Ballots to which Paragraph 1. refers comprised only some of the ballots to be counted at the April 13, 2021 election had it not been canceled. Thus, if the HOA used them to bolster its certification in Paragraph 1., many owners would be disenfranchised. Furthermore, even those ballots were not valid for anything other than the April 13, 2021 election and that validity expired

immediately upon the election being canceled in accordance with A.R.S 33-1250.C.3. and the directive clearly stated on the Absentee Ballot. (Exhibit 5 page 2)

- f. The evidence also shows that the Absentee Ballots delivered to BCMI in preparation for the April 13, 2021 election, later canceled, were not a trustworthy indicator of who may have received the most votes. Many of them were delivered to BCMI in batches, not by individual voters, but by one or more third-parties. (Exhibit 11). One glaring example is that on March 21, 2021, 19 Absentee Ballots, all voting for Figueroa, were faxed to BCMI, all between the hours of 2:18 and 2:40 pm, from the same OfficeMax location about seven miles away from the Condominium. It would be untenable to conclude that 19 individual voters marched into OfficeMax over this 22-minute time span to fax their individual ballots to BCMI. Thus, the obvious conclusion is that these ballots were delivered to BCMI by a third party. Furthermore, on March 21, 2021, the only person, other than the individual member, who should have had access to these ballots was the Election Inspector appointed by BCMI to oversee the election. In addition, Exhibit 11 describes other examples suggestive of inappropriate access to and delivery of voted ballots: These were faxed to BCMI from a UPS location about one mile from the Condominium: 4 on March 19, 2021 (all at 12:32 pm); 4 on March 20, 2021 (all at 13:36 pm); 6 on March 22, 2021 (between 12:49 pm and 12:51 pm); 5 on March 24, 2021 (between 12:52 pm and 12:57 pm); 6 on March 29, 2021 (between 4:41 pm and 4:45 pm); and 3 on April 3, 2021 (all at 3:26 pm).
3. Figueroa and Bahr appointed themselves to the BOD at a meeting, without quorum, on June 25, 2021:
- a. On June 23, 2021, the day after the Court dismissed the lawsuit, BCMI distributed a Notice of Board Meeting to be held on June 25, 2021. (Exhibit 6) The Notice stated: **"In accordance with the Governing Documents, the meeting cannot occur unless a quorum is achieved; a majority (three) of the prescribed number of directors (five) being in attendance."** The BOD had increased the composition of the Board from three to five at a Special Board Meeting held on April 8, 2021. (Exhibit 7)
- b. Almost immediately, Figueroa posted a meeting notice for the June 25<sup>th</sup> Meeting at the property instructing owners to cancel and disregard BCMI's Notice: **PLEASE, CANCEL [Sic] AND DISREGARD ANY NOTICE BY BROWN MANAGMENT [Sic] REFERENCING [Sic] A MEETING ON JUNE 25<sup>TH</sup>. THE MAJORITY OF THE BOARD CODUCTS [Sic] AND NOTICES MEETINGS. IT IS NOT MANDATORY TO HAVE BROWN MANAGEMENT BE AT ANY HOMEOWNER MEETING.** (Exhibit 8)
- c. Quorum was not achieved because Tony Basuini, Board President, did not attend. Nonetheless, in violation of **Bylaws Article 3 §3.9.<sup>5</sup>**, which requires a majority of the prescribed number of directors to be present to transact business, Figueroa and Bahr proceeded with the meeting without quorum, demoting Tony Basuini to member-at-large and appointing Figueroa to the Board as President/Treasurer and Bahr as Vice-President/Secretary. In addition, they adopted a gamut of controversial measures. (Exhibit 9)
- d. Figueroa acknowledged, in Paragraph 3. of the Settlement Agreement (Exhibit 4), entitled: Composition of the Board, that the BOD was expanded from three members to five. Yet, to date she has made no effort to fill the two vacant seats, and has stripped Tony Basuini of his authority, actions

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<sup>5</sup> **Bylaws Article 3 §3.9.** states in relevant part: "A majority of the prescribed number of directors shall constitute a quorum for the transaction of business."

that suggest she and Bahr have sought and successfully attained unfettered control over the Association's affairs.

4. Witnesses:

**Barbara Kampp**

Address: 3935 E Rough Rider Road, Unit 1111, Phoenix, Arizona 85050

Phone: 808-398-2511

Email address: [conradkampp@gmail.com](mailto:conradkampp@gmail.com)

**Conrad Kampp**

Address: 3935 E Rough Rider Road, Unit 1111, Phoenix, Arizona 85050

Phone: 808-398-2611

Email address: [conradkampp@gmail.com](mailto:conradkampp@gmail.com)

**Carol Lehan**

Address: 5107 Davenport Street, Omaha, Nebraska 68132-2857

Phone: 402-630-4230 (cellular)

Email address: [Carol.Lehan@bhhsamb.com](mailto:Carol.Lehan@bhhsamb.com)

**Diane E. Potter**

Address: 3935 E Rough Rider Road, Unit 1244, Phoenix, Arizona 85050

Phone: 623-910-8087

Email address: [potterdiane@yahoo.com](mailto:potterdiane@yahoo.com)

5. Exhibit List:

- Exhibit 1: Articles of Incorporation
- Exhibit 2: Declaration
- Exhibit 3: Bylaws
- Exhibit 4: Settlement and Mutual Release of Claims
- Exhibit 5: April 13, 2021 Annual Meeting Notice
- Exhibit 6: June 25, 2021 Special Board Meeting Notice from BCMI
- Exhibit 7: April 8, 2021 Special Board Meeting Minutes
- Exhibit 8: Notice from Figueroa and Bahr to Disregard June 25, 2021 Notice from BCMI
- Exhibit 9: Minutes of June 25, 2021 Meeting
- Exhibit 10: Email from Marshall Chess
- Exhibit 11: Absentee Ballot Delivery Spreadsheet

6. Remedies Sought

- a. Petitioner is seeking an Order removing Figueroa and Bahr from the Board of Directors and rendering them ineligible to serve on the Board again until April 2024, the date when Figuero's term would expire in accordance with the time set in A.R.S. 33-1243.H.7.
- b. Petitioner is seeking an Order to nullify the measures adopted at the June 25, 2021 Special Board Meeting convened and conducted without required quorum and therefore adopted without authority.

c. Petitioner is seeking an Administrative-Law-Judge-supervised process to appoint an interim board and to seat the full complement of five (5) board members by an election by Association members to be held within 30 days of the Order in accordance with the time set in A.R.S. 33-1243.H.6.

Arleen D Jouxson  
PETITIONER: ARLEEN D. JOUXSON

1-24-22  
DATE:

**EXHIBIT LIST**

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