

Briefing Document: Tom Barrs v. Desert Ranch Homeowners Association

Executive Summary

This document synthesizes the legal proceedings and key insights from the case *Tom Barrs v. Desert Ranch Homeowners Association* (Case No. LC2023-000179-001). The central dispute involves an appeal by Tom Barrs against an administrative decision by the Arizona Department of Real Estate, which originally denied his request to compel the Desert Ranch Homeowners Association (DRHA) to provide a membership list including names and addresses. The Superior Court of Arizona ultimately reversed the administrative decision in part. The court determined that while email addresses and phone numbers are "personal" and protected from disclosure, names and physical property addresses are not exempt under A.R.S. § 33-1805. The ruling emphasizes that access to names and addresses is essential for member participation in homeowners association (HOA) affairs. Additionally, the records reveal a period of attempted settlement, internal HOA board disagreements regarding the fairness of Barrs' proposals, and a significant financial dispute regarding the taxation of legal fees and costs.

Case Overview and Administrative History

The litigation originated from a 2021 request by Tom Barrs, a property owner and member of the Desert Ranch HOA, for an updated membership list.

- **Initial Request:** On October 21, 2021, Barrs requested a 2021 membership list. The DRHA management company denied the request, stating, "the Owner Directory is not made available to the residents."
- **Administrative Petition:** Barrs filed a petition with the Arizona Department of Real Estate on April 18, 2022, alleging a violation of A.R.S. § 33-1805.
- **Initial Ruling:** An Administrative Law Judge (ALJ) conducted a hearing in January 2023 and issued a decision on February 21, 2023, denying Barrs' petition. The Department of Real Estate subsequently denied a request for rehearing on April 18, 2023.
- **Superior Court Appeal:** Barrs filed a Notice of Appeal in the Maricopa County Superior Court on May 23, 2023, seeking judicial review of the administrative decision.

Analysis of Main Themes and Legal Arguments

Interpretation of A.R.S. § 33-1805 (Records Availability)

The primary legal conflict centered on whether an HOA membership list constitutes a "personal record" that an association may withhold. | Statutory Provision | Barrs' Argument | Court's Determination || ----- | ----- | ----- || **A.R.S. § 33-1805(A)** | All financial and other records must be made reasonably available to members. | Records must be available unless a specific exception applies. || **A.R.S. § 33-1805(B)(4)** | The exception for "personal records" refers to private/secret information (like health/financial data), not names and addresses. | Names and property addresses are not "personal records" and must be disclosed. || **A.R.S. § 10-11601(C)** | As a nonprofit, the HOA must maintain a record of members' names and addresses. | Confirmed; these records are required for corporate transparency. |

Access to Communication Channels

Barrs argued that the spirit of HOA laws is to allow members to speak on both sides of an issue. Without access to a membership list, he contended it is impossible to:

- Contact out-of-state owners.
- Circulate petitions for the removal of board members (A.R.S. § 33-1813).
- Express support or dissent before a board vote (A.R.S. § 33-1804). The Court agreed that members must have the ability to know who is in the association to participate in its affairs, but limited this to "knocking on doors, leaving pamphlets, or sending mail."

Internal Dynamics and Settlement Negotiations

Between June and September 2023, the Superior Court proceedings were stayed to allow for settlement discussions. Documents show a significant divide within the DRHA Board of Directors.

Internal Board Correspondence (October 2023)

Emails included in the record highlight a lack of consensus within the HOA leadership:

- **Support for Settlement:** Board member Susan Klinefelter expressed that Barrs' offer was "fair and should be accepted," noting she did not vote to reject it.
- **The "Simple Path":** Barrs proposed a joint stipulation to remand the case to the OAH for a rehearing with no admission of guilt and no monetary penalties, provided the records were released.
- **Conflict of Interest Allegations:** Correspondence suggests some board members believed others had "special interests" or personal apprehensions (e.g., impact on a Real Estate license) that hindered a resolution.
- **Financial Impact:** Barrs noted the HOA had spent approximately \$30,000 "to hide records that should have been provided," while the Association claimed the litigation had left them "without cash reserves."

Judicial Findings and Final Ruling

On April 4, 2024, Honorable Joseph P. Mikitish issued a Minute Entry reversing the administrative decision in part.

Key Conclusions of Law

1. **Reversal on Names/Addresses:** The court found the ALJ erred by classifying the entire membership list as personal. Because names and addresses do not relate to information individuals normally keep private, they do not fall under the statutory exemption.
2. **Protection of Emails/Phones:** The court upheld the withholding of email addresses and phone numbers. It ruled these are "more personal and less public" and could be misused for harassment or marketing.
3. **Inconsequential Error:** Barrs argued the ALJ misidentified the 2021 list as the 2020 list. The court ruled this error was "inconsequential" to the final outcome.

Financial Claims and Costs

Following the ruling, Barrs filed an application for the taxation of costs and attorney's fees.

Summary of Expenses Claimed by Appellant

Barrs requested a total award of **\$9,309.57** , itemized as follows:

- **Clerk's Fees:** \$333.00
- **Mailed Copies of Record:** \$27.18
- **Reporter's Transcript:** \$1,253.39
- **Attorneys' Fees:** \$7,196.00 (Total for limited scope representation)
- *Burch & Cracchiolo, P.A.:* \$5,480.00
- *Dessaules Law Group:* \$1,716.00
- **Other (OAH filing fee):** \$500.00

Respondent's Defense

The Desert Ranch HOA Board responded *pro se* , asserting that Barrs should be denied fees because:

- He rejected a previous written offer.
- The HOA is currently self-managed because their management company chose not to renew its contract "due to Mr. Barrs."
- The association is "without cash reserves" due to the ongoing litigation. The Court noted that Barrs, having filed his opening brief *pro per* , cannot receive attorney's fees for his own time, though he may recover fees paid for limited-scope legal assistance.