

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Marilyn Fogelsong,  
3 Petitioner,

**No. 25F-H050-REL-RHG**

4 vs.

**ADMINISTRATIVE LAW JUDGE  
DECISION**

5 Park Townhouses Homeowners  
6 Association, Inc.  
7 Respondent.

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8 **HEARING:** February 11, 2026 at 9:00 AM.

9 **APPEARANCES:** Marilyn Fogelsong (“Petitioner”) appeared on her own behalf.  
10 Gerald Schwarzenbach appeared on behalf of Park Townhouses Homeowners  
11 Association, Inc., (“Respondent” and “Association”) with Mark Schlang as a witness.  
12 David Zeinfeld and Jodie Schlang observed.

13 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

14 **EXHIBITS ADMITTED INTO EVIDENCE:** The December 03, 2025, ORDER  
15 GRANTING RE-HEARING AND NOTICE OF RE-HEARING (“REHEARING NOTICE”), including the  
16 referring agency’s attached administrative file, the June 03, 2025, NOTICE OF HEARING in  
17 25F-H050-REL, including the referring agency’s attached administrative file, 25F-H050-  
18 REL ADMINISTRATIVE LAW JUDGE DECISION, December 19, 2025, ORDER GRANTING  
19 CONTINUANCE, and MINUTE ENTRIES dated January 09, 2026, and February 09, 2026, were  
20 admitted into the evidentiary record.

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21 After review of the hearing record in this matter, the undersigned Administrative  
22 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this  
23 ORDER to the Commissioner of the Arizona Department of Real Estate (“Department”).

24 **FINDINGS OF FACT**

25 **BACKGROUND AND PROCEDURE**

26 1. The Department is authorized by statute to receive and to decide petitions  
27 for hearings from members of homeowners’ associations and from homeowners’  
28 associations in Arizona.  
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1           2.       On or about March 31, 2025, Petitioner filed a 4-issue petition with the  
2 Department that alleged Respondent violated ARIZ. REV. STAT. §§ 33-1811, 33-1804(A)  
3 and (F); and 10-830(A); as well as the Association’s Covenants, Conditions, and  
4 Restrictions (“CC&Rs”).<sup>1</sup> Upon receipt of a timely ANSWER by Respondent,<sup>2</sup> the  
5 Department referred docket number 25F-H050-REL to the Office of Administrative  
6 Hearings (“OAH”), an independent state agency, for an evidentiary hearing on July 16,  
7 2025, to address the following issues:

- 8           • Whether Respondent failed to disclose conflicts-of-interest [*sic*] when hiring an  
9 the Association’s property manager in violation of ARIZ. REV. STAT. § 33-1811.
- 10           • Whether Respondent violated ¶19 of the CC&Rs by directing the Association’s  
11 property manager to pursue an unsanctioned project for individual townhouses  
12 beyond the scope of [Homeowners Association] management for common  
13 areas.
- 14           • Whether Respondent violated ARIZ. REV. STAT. § 33-1804(A) and (F) open  
15 meeting laws of by holding a private board meeting without notice; failing to  
16 provide material information, minutes, financial statements, and a budget upon  
17 request; and by failing to communicate via the designated representative.
- 18           • Whether Respondent violated ARIZ. REV. STAT. § 10-830(A) by failing to act in  
19 good faith with the care an ordinarily prudent person in a like position would act  
20 by failing to perform their duties.<sup>3</sup>

21           3.       On August 05, 2025, an ADMINISTRATIVE LAW JUDGE DECISION was issued in  
22 25F-H050-REL that held Petitioner failed to sustain her burden of proof of Issues 1-3, and  
23 that Issue 4 fell outside the Department’s jurisdiction and was therefore rendered moot.  
24 As such, Petitioner’s request(s) for relief were all denied.

25           4.       On September 03, 2025, Petitioner submitted a DISPUTE REHEARING  
26 REQUEST to the Department.<sup>4</sup> Attached thereto, was an attestation from Petitioner’s son  
27 (“Son”) that included the following, in pertinent parts:

I authorized my co-owner, [Petitioner], to represent me with regard to all  
[Association] matters on April 26, 2021. I have not revoked that authorization.

28 <sup>1</sup> See 25F-H050-REL Agency File, pages 1-3.

29 <sup>2</sup> See Park Townhouses Association Response Re Case #25F-HO50.

30 <sup>3</sup> See 25F-H050-REL Agency File, page 2.

<sup>4</sup> See September 3 2025 Rehearing Request.pdf.

1 [Respondent] has not sent any Notice of Meetings, Minutes, Financial Statements,  
2 Manager Proposals, or Management Agreements to me. I have not received any  
3 physical mail at my address, and [Respondent has] not contacted me by the e-mail  
4 [sic] that I directed them to use. To my understanding [Respondent is] not even  
5 claiming to have send me any of the other information requested and yet  
6 [Petitioner's] claims are dismissed for this reason? Does no co-owner not have any  
7 rights to the community finances? Because these are the inferences taken, and the  
8 result is an injustice of basic rights to ensure the [Association] is not being  
9 fraudulent.

10 5. On November 13, 2025, Respondent submitted its objection in response to  
11 the Department.<sup>5</sup>

12 6. On December 03, 2025, the Department issued a REHEARING NOTICE to the  
13 parties in the above-captioned matter referred this matter back to OAH for an evidentiary  
14 hearing schedule for January 09, 2026, on the grounds of (a) error in admission or  
15 rejection of evidence or other errors of law occurring during the 25F-H050-REL  
16 proceeding, and (b) findings of fact or decision not being supported by the evidence or  
17 contrary to law.<sup>6</sup> Per the REHEARING NOTICE, the purpose of rehearing is to address the  
18 aforementioned issues from 25F-H050-REL.<sup>7</sup>

19 7. On December 16, 2025, Respondent submitted a MOTION TO CONTINUE to  
20 the Tribunal, which was granted.

21 8. On December 16, 2025, the Tribunal issued an ORDER GRANTING  
22 CONTINUANCE that reset the matter for hearing at 9:00 a.m. on February 11, 2026.

23 9. On January 02, 2026, Petitioner submitted a MOTION FOR SUMMARY  
24 JUDGEMENT ON CLAIM 3. On January 07, 2026, Respondent submitted its reply in  
25 opposition. On January 12, 2026, the Tribunal issued a MINUTE ENTRY that denied  
26 Petitioner's motion.

27 10. On January 17, 2026, Petitioner submitted a MOTION IN LIMINE. On February  
28 09, 2026, the Tribunal issued a MINUTE ENTRY in response.<sup>8</sup>

29 <sup>5</sup> See ADRE Rehearing Response 25113 (002).pdf.

30 <sup>6</sup> See Notice of Rehearing Request – TEMPLATE.docx.

<sup>7</sup> *Id.*

<sup>8</sup> The parties were specifically advised that (a) Standing is always an issue in Homeowners Association ("HOA") disputes. Petitioner's request that Respondent be precluded from introducing evidence challenging her standing to bring forth the current action is **denied**; (b) The evidentiary standard is a preponderance of

**THE PARTIES AND GOVERNING DOCUMENTS**

11. Respondent is a Planned Community Association whose members own properties in the Park Townhouses residential real estate development located in Tucson, Pima County, Arizona. Membership for the Association is comprised of the owners of eight (8) townhome units within the community. The Association is governed by its CC&Rs and Bylaws, and is overseen by a Board of Directors (“the Board”). The Association is also regulated by Title 33, Chapter 16, Article 1 of the ARIZ. REV. STAT.

12. Petitioner is a Park Townhouses property owner and a member of the Association. Petitioner is a partial owner of 2467 E. 1<sup>st</sup> St. Tucson, AZ 85719 (“Property”) with Son; who lives in the unit and is the majority owner.<sup>9</sup> On or about April 28, 2021, Petitioner paid Son \$12,000.00 for a 5% interest in Property. On or about February 22, 2022, the deed was recorded.

a. Petitioner previously served as President of the Board.

13. Tucson Realty & Trust Company, Management Services, LLC (“Tucson Realty”), was voted on and approved by Members on February 17, 2025, for HOA management services. Tucson Realty has a separate division that manages individual townhome units; that division also manages a number of units in the community.<sup>10</sup>

14. The Association’s Declaration,<sup>11</sup> recorded October 31, 1980, provides, in pertinent parts, as follows:

The Indigo Company, an Arizona Partnership hereinafter referred to as Indigo, is the owner of the real property situated in Pima County Arizona, described as follows:

NOW, THEREFORE, [THE INDIGO COMPANY, AN ARIZONA PARTNERSHIP] hereby declares various covenants, conditions and restrictions relating to the aforesaid real property, which is hereinafter

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the evidence. See ARIZ. ADMIN. CODE R2-19-119. Petitioner’s request that Respondent be precluded from arguing the applicability of a lesser evidentiary standard in the case at bar, presumably probable cause, is **granted**; (c) Neither party has submitted a subpoena request in this matter under the authority of ARIZ. ADMIN. CODE R2-19-113. As such, no individual is compelled to provide testimony on behalf of either party. Petitioner’s request that the co-owner of Unit 2467, Levi Lazarus, be required to testify at the scheduled hearing is **granted**; and (d) Character is not at issue in an HOA dispute. Neither party shall be permitted to offer character evidence regarding a party or witness. Petitioner’s request that “irrelevant and prejudicial attacks” be precluded at hearing is **granted**.

<sup>9</sup> See 25F-H050-REL Agency File, page 63.

<sup>10</sup> See Park Townhouses Association Response Re Case #25F-HO50.

<sup>11</sup> See 25F-H050-REL Agency File, page 53-54; see also September 3 2025 Rehearing Request.pdf..

1 sometimes referred to as “the premises”. This declaration hereby  
2 establishes a plan for the individual ownership of Lots 1 to 9 inclusive, and  
3 the improvements contained thereon, in Park Townhouses as recorded in  
4 Book 33 of Maps, Page 40, Official Records, Pima County, Arizona,  
5 together with ownership by a non-profit corporation of all recreation areas  
6 and streets and other common areas, which are hereinafter defined and  
7 referred to as “common area” or as “common elements”, and which are  
8 designated upon the aforesaid plat of Park Townhouses as common area A,  
9 and common area B. The said covenants, conditions and restrictions are as  
10 follows:

11 19. . . . [a]ny action necessary or appropriate to the proper  
12 maintenance, safety, control and upkeep of all or any of the common  
13 elements, and any action necessary or appropriate to the  
14 maintaining of, if provided, television antennae and cable systems to  
15 the lots, security or guard services for the premises or any portion  
16 thereof, streets, common areas, swimming pools and other  
17 recreational facilities, shall be taken through the Park Home Owners  
18 Association.<sup>12</sup>

19 15. The Association’s Amended Declaration,<sup>13</sup> recorded June 08, 1982, adds  
20 the following to Covenant 40:

21 The consent of the owners of lots to which at least 67 percent of the votes in the  
22 Park Association are allocated and the approval of eligible holders holding  
23 mortgages on lots which have at least 51 percent of the votes of lots subject to  
24 eligible holder mortgages, shall be required to add or amend any material  
25 provisions of the constituent. documents [sic] of the project, which establish,  
26 provide for, govern or regulate any of the following:

27 c. Reserves for maintenance, repair and replacement of the common areas (or  
28 units if applicable);

29 16. The Association’s Amended and Restated Bylaws,<sup>14</sup> Article I Section 8 –  
30 Notice of Meetings, provides, in pertinent parts, as follows:

Notice to members of each regular and special meeting of the Board, stating the  
date, time, place, and purpose thereof, shall be given by any reasonable means  
including, but not limited to, phone, electronic mail, and regular mail, at least three  
days in advance of the meeting. [I]n emergency situations, the Board may also act,  
in the absence of a meeting, by electronic mail and subsequently follow the action  
by written resolution signed by a majority of the members of the Board and

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12 *Id.*

13 *Id.*

14 *Id.*

1 announced at the next regular board meeting. Notice to members of meeting of the  
2 Board of Directors is not required if emergency circumstances require action by the  
Board before notice can be given.

3 17. The Association's Amended and Restated Bylaws,<sup>15</sup> Article III Section 5 –  
4 Notice of Meetings, provides as follows:

5 Notice of every meeting of the members shall state the purpose or purposes for  
6 which the meeting is called and the date, time, and the place within the county  
7 where it is to be held, and thereof shall be sent by mail to the owner's address on  
8 record with the Pima County Assessor's Office with an email copy to the last know  
9 email address of the owner, not less than ten (10) nor more than forty (40) days  
before the meeting.

10 18. The Association's Amended and Restated Bylaws,<sup>16</sup> Article V Section 2 –  
Management Agreements, provides, in pertinent parts, as follows:

11 The Board of Directors shall have express authority to enter into a management  
12 agreement or agreements with third parties in order to facilitate efficient operation  
13 of the real property and all improvements thereon as determined by the Board of  
14 Directors to be in the best interest of the Association. It shall be the primary  
15 purpose of such management agreement to provide for the administration,  
management, repair, maintenance, and safety of the community.

#### 16 **PARTY STIPULATIONS**

17 19. Parties were advised that because Issue 4 fell outside the Department's  
18 jurisdiction, as well as OAH's, that neither party was permitted to present evidence  
19 regarding such. The parties did not object.

#### 20 **HEARING EVIDENCE**

21 20. Petitioner testified on her own behalf.<sup>17</sup> Gerald Schwarzenbach and Mark  
22 Schlang testified on behalf of Respondent. The substantive evidence of record regarding  
23 Issues 1-3 are as follows:

#### 24 **Issue 1**

- 25 a. On February 17, 2025, Respondent held a meeting to address the agenda  
26 issue of whether to hire a Manager for the Association. A single proposal  
27 was presented to Members, which was accepted – selecting Tucson Realty,

28 <sup>15</sup> *Id.*

<sup>16</sup> *Id.*

29 <sup>17</sup> Although expressly granted permission by the Tribunal for Son to testify, Petitioner did not call him as a  
30 witness.

1 which previously held the role in 2022, for the position. Petitioner objected,  
2 arguing that hiring Tucson Realty was an alleged conflict of interest because  
3 the company had a separate division that managed two (2) individual  
4 townhouses in the community – at least one of whom had benefited from  
5 their management by receiving “preferential treatment” to the detriment of  
6 remaining Members. Additionally, Petitioner alleged that during its former  
7 employ Tucson Realty had collected parking violation fines and failed to  
8 remit them to the Association or disclose tenant information.

9 **Issue 2**

10 b. Per Petitioner, on March 31, 2025, Tucson Realty met with an unnamed  
11 painting company to solicit bids to repaint the exteriors of all units in the  
12 community, but did not have the express consent of Members to act on their  
13 behalf.

14 **Issue 3**

15 c. Petitioner accused the Association of failing to provide requested paint bids,  
16 minutes from December 11, 2024, and February 21, 2025, meetings, per  
17 her request. Petitioner also accused the Association of failing to provide  
18 financial statements and HOA manager proposals requested February 04,  
19 2025. Petitioner also accused the Association of failing to provide a copy of  
20 its proposed Management Agreement requested February 19, 2025, and  
21 February 21, 2025. Petitioner also accused the Association of failing to  
22 provide proper notice of its February 17, 2025, meeting. Petitioner further  
23 accused the Association of issuing an email to Members on March 05, 2025,  
24 regarding the landscaping, that intentionally did not include her in the  
25 transmission of that correspondence.

**REHEARING EVIDENCE**

**Issue 1**

- d. Petitioner testified that on an unidentified date she asked Mr. Schwarzenbach, Mr. Schlang, and Tucson Realty for Member contact information, but conceded that she did not ask the Board. Petitioner did not receive the information she requested.
- e. Petitioner testified that neither Mr. Schwarzenbach nor Mr. Schlang reside in the community, and that both rent their respective domiciles to long-term tenants. Per Petitioner, those tenants incurred an unidentified number of parking citations, the corresponding fees in an unknown amount of which were collected by Tucson Realty on behalf of Mr. Schwarzenbach and Mr. Schlang but not provided to the Association.
- f. Petitioner testified that at a meeting held February 17, 2025, she voted “no” to the agenda item of rehiring Tucson Realty as the Association’s property manager. Per Petitioner, the company’s refusal or otherwise failure to “disclose favorable treatment to the detriment of the Association” constituted impermissible favoritism.
- g. Petitioner testified that on or about November 11, 2023, she notified Respondent that it was a conflict of interest for Tucson Realty to manage its common areas whilst also managing individual units in the community, and that they had charged the Association for legal services when they were not the property manager at the time. Specifically, Petitioner alleged that Tucson Realty did not file the Association’s taxes for the 2021 season, and that they were billed by their accountant two (2) years later.

**Issue 2**

- h. Petitioner testified that Respondent issued the agenda for its May 05, 2025, meeting less than 36 hours before it was scheduled to commence.
- i. Petitioner testified that on an unknown date Respondent attempted to paint the awnings of a number of unidentified units, including her own, by inviting contractors to provide bids for the proposed scope(s) of work.

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**Issue 3**

- j. Petitioner testified that she asked for financial statements, a management contract, and minutes from meetings held December 11, 2024, February 01, 2025, and February 04, 2025, but did not receive any documents from Respondent related to her request(s).

**ADDITIONAL EVIDENCE**

- k. Mr. Schwarzenbach testified that Petitioner requested to be appointed to the Board in 2022, and that after her appointment she released Tucson Realty as the Association's property manager. Per Mr. Schwarzenbach, in September 2024 the Association began soliciting property management bids and (re)selected Tucson Realty by vote of the Membership in December 2024. Mr. Schwarzenbach also testified that the records that Petitioner had requested came at a time when the Board were unaware of their whereabouts, but that he believes they are currently in the possession of Tucson Realty. Mr. Schwarzenbach also testified that the agenda item of painting/plastering was discussed at the May 05, 2025, meeting, and that six (6) Members voted in agreement to hire a contractor – as the seventh (7<sup>th</sup>) unit owner wanted to undergo the work himself, and Petitioner voted “no.” All units, save Petitioner's, have been painted.
- l. Mr. Schlang testified that the parking violations referenced by Petitioner could not be authenticated or otherwise validated, and denied any funds had been received, privately or by the Association, as a result of their issuances. Mr. Schlang also testified that Petitioner was not provided with tenant contact information because she had previously used such information to run unauthorized background checks on tenants unbeknownst to them or their landlords.

**CONCLUSIONS OF LAW**

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a planned community association. The owner or association may petition the department

1 for a hearing concerning violations of community documents or violations of the statutes  
2 that regulate planned communities as long as the petitioner has filed a petition with the  
3 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

4 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D),  
5 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested  
6 case at bar. OAH has the authority to interpret the contract between the parties.<sup>18</sup>

7 3. In this proceeding, Petitioner bears the burden of proving by a  
8 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. §§ 33-1804(A)  
9 and (F), 33-1811, and ¶19 of the CC&Rs.<sup>19</sup> Respondent bears the burden of establishing  
10 any affirmative defenses by the same evidentiary burden.<sup>20</sup>

11 4. "A preponderance of the evidence is such proof as convinces the trier of fact  
12 that the contention is more probably true than not."<sup>21</sup> A preponderance of the evidence is  
13 "[t]he greater weight of the evidence, not necessarily established by the greater number of  
14 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
15 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
16 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than  
17 the other."<sup>22</sup>

18 5. In Arizona, when construing statutes, we look first to a statute's language as  
19 the best and most reliable index of its meaning. If the statute's language is clear and  
20 unambiguous, we give effect to that language and apply it without using other means of  
21 statutory construction, unless applying the literal language would lead to an absurd result.  
22 Words should be given "their natural, obvious, and ordinary meaning."<sup>23</sup>

23 6. Statutes should be interpreted to provide a fair and sensible result.  
24 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,  
25 238, 439 P.2d 805, 809 (1968) ("Courts will not place an absurd and unreasonable  
26 construction on statutes.").

27 <sup>18</sup> See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

28 <sup>19</sup> See Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-119.

29 <sup>20</sup> *Id.*

30 <sup>21</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>22</sup> BLACK'S LAW DICTIONARY 1220 (8<sup>th</sup> ed. 1999).

<sup>23</sup> *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

1           7.       When the legislature uses a word or words in one section of a statute, but  
2 not another, the tribunal may not read those words into the section where the legislature  
3 did not include them.<sup>24</sup> Unless defined by the legislature, words in statutes are given their  
4 ordinary meanings.<sup>25</sup>

5           8.       Each word, phrase, clause, and sentence of a statute or rule must be given  
6 meaning so that no part will be void, inert, redundant, or trivial.<sup>26</sup>

7           9.       ARIZ. REV. STAT. § 1-243 provides, in relevant part, that “[T]he time in which  
8 an act is required to be done shall be computed by excluding the first day and including  
9 the last day, unless the last day is a holiday, and then it is also excluded.”

10          10.       ARIZ. REV. STAT. § 33-1804(A) provides, in relevant part, as follows:

11           A. Notwithstanding any provision in the declaration, bylaws or other documents  
12 to the contrary, ***all meetings of the members' association and the board of***  
13 ***directors, and any regularly scheduled committee meetings, are open to***  
14 ***all members of the association*** or any person designated by a member in  
15 writing as the member's representative and all members or designated  
16 representatives so desiring shall be permitted to attend and speak at an  
17 appropriate time during the deliberations and proceedings. The board may place  
18 reasonable time restrictions on those persons speaking during the meeting but  
19 shall permit a member or member's designated representative to speak once  
20 after the board has discussed a specific agenda item but before the board takes  
21 formal action on that item in addition to any other opportunities to speak. The  
22 board shall provide for a reasonable number of persons to speak on each side of  
23 an issue. ***Persons attending may audiotape or videotape those portions of***  
24 ***the meetings of the board of directors and meetings of the members that***  
25 ***are open. The board of directors of the association shall not require***  
26 ***advance notice of the audiotaping or videotaping and may adopt***  
27 ***reasonable rules governing the audiotaping and videotaping of open***  
28 ***portions of the meetings of the board and the membership, but such rules***  
29 ***shall not preclude such audiotaping or videotaping by those attending,***  
30 ***unless the board audiotapes or videotapes the meeting and makes the***  
***unedited audiotapes or videotapes available to members on request***  
***without restrictions on its use as evidence in any dispute resolution***  
***process.*** Any portion of a meeting may be closed only if that closed portion of  
the meeting is limited to consideration of one or more of the following:

<sup>24</sup> See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

<sup>25</sup> *Id.*

<sup>26</sup> See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 1. Legal advice from an attorney for the board or the association. On final  
2 resolution of any matter for which the board received legal advice or that  
3 concerned pending or contemplated litigation, the board may disclose  
4 information about that matter in an open meeting except for matters that are  
5 required to remain confidential by the terms of a settlement agreement or  
6 judgment.

7 2. Pending or contemplated litigation.

8 3. Personal, health or financial information about an individual member of  
9 the association, an individual employee of the association or an individual  
10 employee of a contractor for the association, including records of the  
11 association directly related to the personal, health or financial information  
12 about an individual member of the association, an individual employee of  
13 the association or an individual employee of a contractor for the association.

14 4. Matters relating to the job performance of, compensation of, health  
15 records of or specific complaints against an individual employee of the  
16 association or an individual employee of a contractor of the association who  
17 works under the direction of the association.

18 5. Discussion of a member's appeal of any violation cited or penalty  
19 imposed by the association except on request of the affected member that  
20 he meeting be held in an open session.  
21 (*Emphasis added.*)

22 11. ARIZ. REV. STAT. § 33-1804(F) provides, in relevant part, that all meetings of  
23 a planned community, whether meetings of the members' association or meetings of the  
24 board of directors of the association, be conducted openly and that notices and agendas  
25 be provided in advance for those meetings that contain the information that is reasonably  
26 necessary to inform the members of the matters to be discussed or decided and to ensure  
27 that members have the ability to speak after discussion of agenda items, but before a vote  
28 of the board of directors or members is taken.

29 12. ARIZ. REV. STAT. § 33-1811 provides that if any contract, decision or other  
30 action for compensation taken by or on behalf of the board of directors would benefit any  
member of the board of directors or any person who is a parent, grandparent, spouse,  
child or sibling of a member of the board of directors or a parent or spouse of any of those

1 persons, that member of the board of directors shall declare a conflict of interest for that  
2 issue. The member shall declare the conflict in an open meeting of the board before the  
3 board discusses or takes action on that issue and that member may then vote on that  
4 issue. Any contract entered into in violation of this section is void and unenforceable.

5 13. “In applying a statute . . . its words are to be given their ordinary meaning  
6 unless the legislature has offered its own definition of the words or it appears from the  
7 context that a special meaning was intended.”<sup>27</sup> Each word, phrase, clause, and sentence  
8 must be given meaning so that no part of the legislation will be void, inert, or trivial.<sup>28</sup>

9 14. Legislation must also be given a sensible construction that avoids absurd  
10 results.<sup>29</sup> If the words do not disclose the legislative intent, the court will scrutinize the  
11 statute as a whole and give it a fair and sensible meaning.<sup>30</sup>

12 15. Neither party clearly presented their evidence in this matter. Here, Petitioner  
13 only testified about his March and April 2021, and February 2022 records requests, and  
14 Respondent did not clarify the specific dates by which the Association responded the  
15 multitude of Petitioner’s requests. Thus, the undersigned to rely heavily on the exhibits  
16 that had been admitted into the record. To that end, however, the material facts in this  
17 matter are distinguishable.

18 16. The crux of the case at bar is whether Petitioner established that  
19 Respondent’s alleged conduct constitutes one or more violations of ARIZ. REV. STAT. § §  
20 33-1804(A) and (F), 33-1811, and/or ¶19 of the CC&Rs by the requisite evidentiary  
21 standard. Based upon a review of the credible and relevant evidence in the record, the  
22 Tribunal finds that Petitioner failed sustained her burden of proof as to all issues.

23 17. Here, the material facts are clear.

24 18. It is clear from the record that Petitioner’s “conflict of interest” allegation is  
25 unfounded; not a single indicia of evidence was presented to support this contention, as  
26 are her allegations of favoritism and preferential treatment. So too are Petitioner’s

27 <sup>27</sup>

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

28 <sup>28</sup> See *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 204, ¶ 17 (App. 2007).

29 <sup>29</sup> See *State v. Gonzales*, 206 Ariz. 469, 471, ¶12 (App. 2003).

30 <sup>30</sup> See *Luchanski v. Congrove*, 193 Ariz. 176, 178, ¶ 9.

1 allegations that Tucson Realty unjustly enriched Mr. Schlang and/or Mr. Schwarzenbach,  
2 or otherwise deprived the Association of monies owed for fines collected, if any. There is  
3 no evidence in the record that tends to support the conclusion that Association's rehiring  
4 of Tucson Realty constituted a statutory violation. The record clearly establishes that  
5 Members may vote to delegate private property maintenance to the Association, which is  
6 how all units, save Petitioner's, came to be painted.

7 19. Interestingly, Mr. Schwarzenbach's admissions regarding Petitioner's  
8 records request establish that Respondent did indeed fail to act as required by statute, but  
9 it is abundantly clear that Petitioner did not allege a violation of the applicable statute –  
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1 ARIZ. REV. STAT. § 33-1805.<sup>31</sup> To hold Respondent in violation would be a violation of its  
2 Due Process rights.

3 20. Notably, no evidence was presented by Petitioner to suggest that  
4 Respondent held a private Board meeting sans notice to Membership. What Petitioner  
5 alleged, and Respondent did not rebut, was that the May 05, 2025, meeting agenda was  
6 provided less than thirty-six (36) hours prior to the start of that meeting. However, neither  
7 ARIZ. REV. STAT. § § 33-1804(A) or (F) are applicable to that conduct – that clearly falls  
8

9 <sup>31</sup> ARIZ. REV. STAT. § 33-1805 provides, in relevant part, as follows:

10 A. Except as provided in subsection B of this section, **all financial and other records of**  
11 **the association shall be made reasonably available for examination by any member**  
12 **or any person designated by the member in writing as the member's representative.** The  
13 association shall not charge a member or any person designated by the member in writing  
14 for making material available for review. **The association shall have ten business days**  
15 **to fulfill a request for examination.** On request for purchase of copies of records by any  
16 member or any person designated by the member in writing as the member's  
17 representative, the association shall have ten business days to provide copies of the  
18 requested records. **An association may charge a fee for making copies of not more**  
19 **than fifteen cents per page.**

20 B. Books and records kept by or on behalf of the association and the board may be withheld  
21 from disclosure to the extent that the portion withheld relates to any of the following:

- 22 1. Privileged communication between an attorney for the association and the  
23 association.
- 24 2. Pending litigation.
- 25 3. **Meeting minutes or other records of a session of a board meeting** that is not  
26 required to be open to all members pursuant to section 33-1804.
- 27 4. Personal, health or financial records of an individual member of the association,  
28 an individual employee of the association or an individual employee of a contractor  
29 for the association, including records of the association directly related to the  
30 personal, health or financial information about an individual member of the  
association, an individual employee of the association or an individual employee of  
a contractor for the association.
5. Records relating to the job performance of, compensation of, health records of or  
specific complaints against an individual employee of the association or an  
individual employee of a contractor of the association who works under the  
direction of the association.

C. The association shall not be required to disclose financial and other records of the  
association if disclosure would violate any state or federal law.  
(*Emphasis added.*)

1 under the purview of ARIZ. REV. STAT. § 33-1804(B),<sup>32</sup> which was not specifically pled by  
2 Petitioner. Again, to hold Respondent in violation would be a violation of its Due Process  
3 rights.

4 21. Therefore, the undersigned Administrative Law Judge concludes that  
5 because Petitioner failed to sustain her burden of proof that Respondent violated ARIZ.  
6 REV. STAT. § § 33-1804(A), 33-1804 (F), 33-1811, and/or ¶19 of the CC&Rs, her petition  
7 must be denied.

8 **FINAL ORDER**

9 In light of on the foregoing,

10 **IT IS ORDERED** that that Petitioner’s petition is denied.

11 **IT IS FURTHER ORDERED** that Respondent shall not reimburse Petitioner’s filing  
12 fee in this matter.

13 **NOTICE**

14 ***This ADMINISTRATIVE LAW JUDGE ORDER (“ORDER”), having been issued as a result of***  
15 ***a rehearing, is binding on the parties.***<sup>33</sup> ***A party wishing to appeal this order must***  
16 ***seek judicial review as prescribed by ARIZ. REV. STAT. § 41-1092.08(H) and Title 12,***  
17 ***Chapter 7, Article 6. Any such appeal must be filed with the Superior Court within***  
18 ***thirty-five (35) days from the date when a copy of this ORDER was served upon the***  
19 ***parties.***<sup>34</sup>

20 Done this day, March 03, 2026.

21 Office of Administrative Hearings

22 <sup>32</sup> ARIZ. REV. STAT. § 33-1804(B) provides, in relevant part, that ***not fewer than ten (10) or more than fifty***  
23 ***(50) days in advance*** of any meeting of the members the Secretary shall cause notice to be hand delivered  
24 or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other  
25 mailing address designated in writing by a member. The notice shall state the date, time and place of the  
26 meeting. A notice of any annual, regular or special meeting of the members ***shall also state the purpose***  
27 ***for which the meeting is called***, including the general nature of any proposed amendment to the  
28 declaration or bylaws, changes in assessments that require approval of the members and any proposal to  
29 remove a director or an officer. The secretary ***shall also provide an agenda for any meeting of the***  
30 ***members’ association*** by hand delivery, mail, website posting, email or other electronic means or posting  
at a community center or other similar location. The failure of any member to receive actual notice of a  
meeting of the members or the meeting agenda does not affect the validity of any action taken at that  
meeting. (*Emphasis added*).

<sup>33</sup> See ARIZ. REV. STAT. § 32-2199.02(B).

<sup>34</sup> See ARIZ. REV. STAT. § 12-904(A).

/s/ Jenna Clark  
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

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