

1 Community Statutes, A.R.S. § 33-1805. The issue identified in the Petition, for which
2 Petitioner paid the requisite \$500.00 filing fee, was as follows:

3 Requests have been made to the HOA community management company
4 for financial information and records that are not being provided per A.R.S.
33-1805.¹

5 4. Respondent, through James (Jim) Gallagher, filed a written answer to the
6 Petition², asserting that all of the complaint items had been resolved. An attached
7 Addendum further asserted the following:

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9 Petitioner is a Director on the Board of Directors for Respondent Cortessa
10 Community Association.

11 The Documents that are the subject of this petition were requested in his
12 role as Treasurer outside of a process established by the Board President
and consequently not provided when first requested.

13 As part of a Board of Directors meeting held Tuesday, August 19, 2025, all
14 of the subject documents were provided to Treasurer Burke, resolving the
15 dispute as it relates to the current petition.

16 5. The Department referred the Petition to the Office of Administrative
17 Hearings, an independent state agency, for an evidentiary hearing.

18 6. A hearing was held on October 23, 2025. Administrative Notice was taken
19 of the agency record.

20 **REFERENCED BYLAWS³**

21 7. Article 3 provided in relevant part as follows:

22 § 3.2 Powers and Duties. . . . To the extent permitted by law, the Board
23 may delegate to one or more committees and to officers, employees or
24 agents of the Association such duties and powers as appear to the Board
25 to be in the best interests of the Association; provided, however, that no
26 such delegation shall relieve the Board of its obligation to perform any
27 delegated duty.

28 ¹ Not. of Hr'g. File, Homeowners Association (HOA) Dispute Process Petition (all errors included in
original.)

29 ² *Id.*

30 ³ See Petitioner Exhibit 8.

1 § 3.15 Managing Agent. The Board may employ for the Association a “Managing
2 Agent”. . . The Board may delegate to the Managing Agent all of the powers
3 granted to the Board or the officers of the Association by the Declaration,
4 Articles, or these Bylaws other than the power (i) to adopt the annual budget, any
5 amendment thereto or to levy assessments; (ii) to adopt, repeal or amend
6 Association Rules; (iii) to designate signatories on Association bank accounts;
7 (iv) to borrow money on behalf of the Association; or (v) to acquire real property.

8 **REFERENCED STATUTES**

9 8. A.R.S. § 33-1805 provides as follows:

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

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

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

42 C. The association shall not be required to disclose financial and other
43 records of the association if disclosure would violate any state or federal
44 law.

HEARING EVIDENCE

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2 9. As a preliminary matter, prior to opening statements, Respondent raised
3 objection to two of the issues brought forth by Petitioner in his submitted Hearing
4 Summary. Specifically, the issues of the legitimacy of the duties of an HOA President to
5 unilaterally establish protocols and processes to control community financial and other
6 records of the community to the HOA Board of Directors (Board), and discussion of two
7 active contracts the HOA held with outside providers as they related to whether the
8 HOA Board was fulfilling its fiduciary responsibilities. The undersigned ALJ sustained
9 the objection and limited the hearing to the issue as presented in the Petition.⁴

10 10. Petitioner testified that he sent three emails to Mike Swift at Kinney
11 Management Services (KMS) on June 2 and 18, 2025, and July 9, 2025, requesting: (1)
12 Caretaker's current landscaping contract(s), (2) market study Mr. Swift mentioned
13 during the May 20, 2025 meeting that was prepared versus an RFP process, (3) Waste
14 Management's current contract(s), and (4) market study that was prepared versus an
15 open bid process.⁵ Petitioner further testified that he did not receive the requested
16 information. On questioning, Petitioner testified that he was unaware of any email
17 address set up to make records requests. Petitioner argued that the statute was directly
18 for receiving copies of records, not examination. Additionally, Petitioner argued the
19 statute did not limit the number of requests permitted.

20 11. Rockwell Kelly, a homeowner and member of Respondent, testified that
21 on May 6, 2025, he emailed Mike Swift requesting a copy of the contract between KMS
22 and Respondent. Mr. Kelly further testified that he did not hear from Mr. Swift until the
23 May 20, 2025 Board meeting, at which time, Mr. Swift told Mr. Kelly he had received the
24 request and it was being forwarded to "whoever was in charge of contracts," and to
25 date, Mr. Kelly had received no further response. On questioning, Mr. Kelly testified that

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27 ⁴ Despite this objection, Respondent introduced arguments and evidence regarding the excluded issues
28 to which the undersigned ALJ permitted Petitioner to respond. The decision in this matter is limited to
29 consideration only of the testimony and arguments related to and in support of the sole issue before this
30 Tribunal as provided in the Petition.

⁵ See Not. of Hr'g. File, BURKE Gmail.

1 he was not invited to examine the records and was unaware of any protocol for
2 requesting records outside of emailing Mr. Swift.

3 12. Dara Chavez, a homeowner and member of Respondent, testified that on
4 January 13, 2025, she sent Mr. Swift an email requesting a copy of Respondent's
5 financial statements for 2022-2024. On January 15, 2025, Mr. Swift responded,
6 directing Ms. Chavez to send the request to "records request at Kinney Management"
7 (Records Request). On January 16, 2025, Ms. Chavez sent her request to Records
8 Request. On January 20, 2025, Records Request responded that it was the policy and
9 position of Respondent that although the request was statutory, it was unreasonable.
10 Thereafter, Ms. Chavez sent requests to Records Request on February 21 and 26,
11 2025; March 11, 12, and 13, 2025; and September 17, 2025 for the name of
12 Respondent's insurance company, name of the entity hired to perform HOA inspections
13 and license plate runs, and an unredacted copy of the KMS contract, respectively. To
14 these requests, Ms. Chavez testified, she received no response.

15 13. James Gallagher, a homeowner member, and President of Respondent,
16 testified that Respondent had established protocols for requesting records either
17 through the association president or through Records Request at KMS. Mr. Gallagher
18 further testified that he had no reason to believe KMS was not responding to requests
19 for records, no requests had been made to him directly, and it was not his intention to
20 deny Petitioner access to records. Additionally, Mr. Gallagher testified that financial
21 records were available to homeowners through Records Request at KMS.

22 14. Michael (Mike) Swift, Community Manager of Respondent, testified as to
23 his duties. Mr. Swift testified KMS instituted the protocol for homeowner records
24 requests for all communities under KMS management. Specifically, the protocol was to
25 send an email to recordrequest@kinneymanagement.com and were monitored by the
26 KMS office in Tempe, Arizona, not Mr. Swift personally. Mr. Swift further testified that,
27 due to KMS records retention policy, corporate records for Respondent were stored at
28 the KMS Tempe office.

29 15. In closing, Petitioner argued that all homeowners should receive records
30 timely and that Board members maintain status as homeowners as well as Board

1 members. Petitioner requested relief such that Respondent would provide reassurance
2 that moving forward homeowners would receive records within the allotted time period,
3 clarification that Board members, as homeowners, were still provided the same rights
4 and protections under the statute, a formal records request procedure be documented,
5 and reimbursement of the ADRE filing fee.

6 16. In closing, Ms. Rudder argued that Respondent followed A.R.S. § 33-1805
7 and the established protocols for requesting records were not followed in this matter. All
8 previous electronic copies of records in response to Petitioner’s requests were provided
9 as a courtesy and not as a requirement of the statute. Additionally, the statute was not
10 specific as to how and where records must be provided nor does it prevent a protocol
11 from being established. Finally, Ms. Rudder argued no evidence was presented to
12 demonstrate that records requests were not fulfilled.

13 **CONCLUSIONS OF LAW**

14 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
15 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned
16 community documents.”

17 2. A.R.S. § 32-2199.01 permits a member of a planned community to file a
18 petition with the Department for a hearing concerning the planned community
19 association’s alleged violations as set forth in Title 33, Chapter 16. This matter lies
20 within the Department’s jurisdiction. That statute provides that such petitions will be
21 heard before the Office of Administrative Hearings.

22 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
23 party to abide by the statute, condominium documents, community documents or
24 contract provision at issue and may levy a civil penalty on the basis of each violation.”
25 This Tribunal is not authorized to order other remediation or order civil penalties for
26 other conduct.

27 4. Petitioner bears the burden of proof to establish that Respondent violated
28 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.⁶

29 ⁶ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
30 (1952).

1 Respondent bears the burden to establish affirmative defenses by the same evidentiary
2 standard.⁷

3 5. “A preponderance of the evidence is such proof as convinces the trier of
4 fact that the contention is more probably true than not.”⁸

5 6. In Arizona, when construing statutes, we look first to a statute’s language as
6 the best and most reliable index of its meaning. If the statute’s language is clear and
7 unambiguous, we give effect to that language and apply it without using other means of
8 statutory construction, unless applying the literal language would lead to an absurd result.
9 Words should be given “their natural, obvious, and ordinary meaning.”⁹

10 7. Unless defined by the legislature, words in statutes are given their ordinary
11 meanings.¹⁰

12 8. Each word, phrase, clause, and sentence of a statute or rule must be given
13 meaning so that no part will be void, inert, redundant, or trivial.¹¹

14 9. Statutes should be interpreted to provide a fair and sensible result.

15 10. A.R.S. § 33-1805 provides an association “ten business days to fulfill a
16 request for examination” and on request for purchase, an association “shall have ten
17 business days to provide copies of the requested records.”

18 11. A.R.S. § 33-1805 does not define “homeowner” or “board member” nor
19 does it explicitly differentiate between the two terms. However, subsection A addresses
20 requests only from “[association] members” and states it applies “[e]xcept as provided in
21 subsection B”; whereas, subsection B provides, “Books and records kept by or on
22 behalf of the association and the **board** may be withheld from disclosure to the extent
23 that the portion withheld relates to” (1) privileged communication between an
24 association attorney and the **association**; (2) pending litigation; (3) minutes or other
25 records of a **board meeting** that are not required to be open to **all members**; and (4)
26 personal information of an individual member, association employee, or contractor

27 ⁷ See A.A.C. R2-19-119(B)(2).

28 ⁸ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ⁹ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

30 ¹⁰ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

¹¹ See *Deer Valley v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 employee.¹² As subsection A addresses only members and applies an exception as to
2 subsection B, and subsection B specifically addresses “board” and “association” duties
3 and functions as separate from “*all*” members, the undersigned ALJ concludes that as it
4 pertains to the instant matter, A.R.S. § 33-1805 recognizes that board members are
5 also homeowner members and differentiates records requests made by and on behalf
6 of a homeowner member and requests made by and on behalf of a board member for
7 board purposes.

8 12. Petitioner’s emails dated June 2 and 18, 2025, and July 9, 2025, were
9 sent from an email address, self-identified by Petitioner as “Tim Cortessa HOA Board
10 Member,” copied to all Respondent’s board members, and requested the documents be
11 provided to “the entire HOA board of directors.” Thus, Petitioner made the referenced
12 requests in his capacity as Treasurer and board member of Respondent and not as a
13 homeowner member. As such, the undersigned ALJ finds that A.R.S. § 33-1805(A)
14 does not apply to Petitioner’s June 2, 18, 2025, and July 9, 2025, emails; therefore,
15 Respondent did not violate the statute as to these requests. The undersigned ALJ
16 makes no determination as to whether Petitioner was entitled to the requested
17 documents in his capacity as a board member of Respondent.

18 13. Mr. Kelly requested a copy of the contract between KMS and Respondent,
19 via email to Mr. Swift on May 6, 2025, and though he did receive a timely verbal
20 acknowledgement of receipt from Mr. Swift on May 20, 2025, he did not, at any time
21 thereafter, receive an invitation to examine the document nor receive a copy thereof.

22 14. Between January 13, 2025, and September 17, 2025, Ms. Chavez
23 requested copies of financial statements, the names of Respondent’s insurance carrier
24 and entity hired to perform inspections and license plate runs, and a copy of the KMS
25 contract. To the request made in January, Ms. Chavez received a timely response
26 advising her of the proper contact for records requests. Ms. Chavez then made her
27 request and those thereafter to the proper contact as advised. In response to the
28 January request for financial records, Ms. Chavez received a timely response advising

29 ¹² Emphasis added.

1 that although the request was statutory, it was unreasonable, and no invitation to
2 examine the documents nor copies thereof were received. As to Ms. Chavez's
3 subsequent requests, as of the date of hearing she had received no response.

4 15. Ms. Rudder argued that Respondent followed the statute by establishing a
5 records request protocol, which was not followed, therefore, the evidence did not
6 demonstrate that requests were not fulfilled in violation of A.R.S. § 33-1805. Although
7 Respondent employed and delegated to KMS its responsibility to take such actions
8 necessary to comply with A.R.S. § 33-1805¹³, no such delegation relieved the Board of
9 its obligation to perform the delegated duty.¹⁴ Mr. Kelly and Ms. Chavez submitted
10 records requests subject to A.R.S. § 33-1805. The requests were not denied as an
11 exception under subsections B or C. Therefore, Respondent violated A.R.S. § 33-1805
12 when it failed to timely make the requested records reasonably available for
13 examination or provide copies thereof.

14 **ORDER**

15 **IT IS ORDERED** that Petitioner be deemed the prevailing party in this matter only
16 as it relates to homeowner member requests for records.

17 **IT IS ORDERED** that Respondent pay Petitioner the filing fee of \$500.00, to be
18 paid directly to Petitioner within thirty (30) days of this Order.

19 **IT IS ORDERED** Respondent is directed to comply with the requirements of
20 A.R.S. § 33-1805 as to homeowner member requests for records going forward.

21 **NOTICE**

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

27 Done this day, November 28, 2025.

28 /s/ Nedra-Su Kawasaki

29 ¹³ Petitioner Exhibit 8, § 3.15.

30 ¹⁴ Petitioner Exhibit 8, § 3.2

Administrative Law Judge

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Transmitted by either mail, e-mail, or facsimile November 28, 2025 to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate

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