

1 agency, for an evidentiary hearing on November 21, 2025, regarding the following issue
2 based on Petitioner's petition:

3 Petitioner alleges the Respondent of violating ARS §33-1805 by failing to
4 respond to a records request made on June 24, 2025.

5 5. Respondent is a homeowners' association whose members own
6 properties in a residential real estate development located in Tucson, Arizona.

7 6. Petitioner is a property owner and a member of the Association.

8 7. The Association is governed by its Covenants, Conditions, and
9 Restrictions ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The
10 Association is also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised
11 Statutes ("ARIZ. REV. STAT.")

12 8. Petitioner testified on her own behalf. She testified that on June 25, 2025,
13 and again on June 26, 2025, she e-mailed a request for various records regarding a
14 recall petition as well as all copies of e-mails to and from Cadden personnel and any
15 Association members regarding the recall petitioner.¹

16 9. In addition, Petitioner testified that as of July 7, 2025, she had not
17 received the requested documents and sent a follow up e-mail informing the Association
18 and the management companies that she would be filing a formal Petition with the
19 Department regarding the same.²

20 10. Jena Carpenter, Community Manager testified on behalf of the
21 Association. Ms. Carpenter testified that Sienna produced all documents it had in its
22 possession from Cadden once it took over as the property management group. In
23 addition, Ms. Carpenter testified that while she believed that Sienna received all of the
24 records from Cadden, it was nonetheless a challenge to obtain the same, and that
25 Sienna may not have received all of the records.

26 **CONCLUSIONS OF LAW**

27 1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV.
28 STAT. §§ 32-2102 and 32-2199 et al., regarding a dispute between an owner and a

29 ¹ See Petitioner's Exhibit entitled "June 25, 26, 2025 records request Agua Dulce records request".

30 ² See Id.

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

5 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02,
6 and 41-1092, OAH has the authority to hear and decide the contested case at bar.

7 3. In this proceeding, Petitioner bears the burden of proving by a
8 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.³

9 4. "A preponderance of the evidence is such proof as convinces the trier of
10 fact that the contention is more probably true than not."⁴ A preponderance of the evidence
11 is "[t]he greater weight of the evidence, not necessarily established by the greater number
12 of witnesses testifying to a fact but by evidence that has the most convincing force;
13 superior evidentiary weight that, though not sufficient to free the mind wholly from all
14 reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the
15 issue rather than the other."⁵

16 5. ARIZ. REV. STAT. § 33-1805 provides, in relevant part, as follows:

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

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

³ See ARIZ. ADMIN. CODE R2-19-119.

⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1. Privileged communication between an attorney for the association and the association.

2. Pending litigation.

3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.

4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the 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.

6. The material facts in this matter are not in dispute.

7. Petitioner made a proper request for documents on June 25 and 26, 2025.

Unfortunately for Petitioner, she was simply the victim of bad timing. The Association switched property management companies from Cadden to Sienna right around the same time, and from the evidence provided, it does not appear that Petitioner received her records. However, this may not be the Association's fault if Cadden was uncooperative in disclosing the documents to Sienna and/or the Association. Petitioner presented no persuasive evidence that documents existed which were not disclosed. Therefore, Petitioner did not meet her burden of proof in demonstrating that the Association was in violation of ARIZ. REV. STAT. § 33-1805.

ORDER

IT IS ORDERED that Petitioner's petition is denied.

By: OAH Staff

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