

1 **Final agency action regarding decision below:**

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3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 MARY CHASTAIN

8 Petitioner,

9  
10 vs.

11 STARLIGHT PINES HOMEOWNERS  
12 ASSOCIATION,

13 Respondent.  
14

**No. 08F-H078008-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

15  
16 **HEARING:** January 2, 2008

17 **APPEARANCES:** Mary Chastain on her own behalf; Melissa Lin, Esq. on behalf  
18 of Starlight Pines Homeowners Association

19 **ADMINISTRATIVE LAW JUDGE:** Lewis D. Kowal  
20

21 **Procedural Background**

22 At the commencement of the hearing, Warren Pennington, Hazel Pennington  
23 (“Penningtons”) and Mary Chastain agreed that Mary Chastain shall be the designated  
24 Petitioner in this matter. The caption of this matter is amended accordingly.

25 One of the alleged violations cited by Petitioner in the Petition filed with the  
26 Arizona Department of Fire, Building and Life Safety is A.R.S. § 33-1802(3), which is a  
27 definitional provision. The Administrative Law Judge ruled that Starlight Pines  
28 Association (“Association”) could not have violated such provision.

29 **Ruling**

30 The Association had a property rule limiting the placement of a recreational  
vehicle (“RV”) to a maximum of four days on a member’s property within the community

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that was not followed by the Association's Architectural Committee ("Committee").  
Thus, the Committee's permanent approval for placement of the Penningtons' RV on  
their property did not comply with Section 3.7 of the Association's Declaration of

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1 Covenant, Conditions and Restrictions (“CC&Rs”) and respective property rule. The  
2 February 8, 2007 non-compliance letter issued by the Association’s Board of Directors  
3 (“Board”) was not a notice of violation. Thus, the Board did not violate A.R.S. § 33-  
4 1803(E).

5 **FINDINGS OF FACT**

6 1. The Penningtons reside at lot 489 of Straight Pines community and  
7 Petitioner is a co-owner of the lot. For purposes of this proceeding, all references  
8 herein to the Penningtons shall also be considered to include the Petitioner.

9 2. The Penningtons submitted to the Committee a request dated October 2,  
10 2006 to have an RV placed on their lot located within the Starlight Pines community.

11 3. On November 29, 2006, the Committee approved the above-mentioned  
12 request and gave permanent approval for an RV to be placed on the Penningtons' lot.

13 4. On January 20, 2007, the Board became aware of the Committee’s  
14 approval of the request made by the Penningtons. Having decided that the Committee  
15 did not have the authority to give permanent approval, on February 8, 2007, the Board  
16 sent out a non-compliance letter to the Penningtons.

17 5. The Board enacted enforcement procedures with respect to Section 3.7 of  
18 the CC&Rs, which provides for the issuance of a non-compliance letter and if there is no  
19 compliance within fifteen days, the issue will be turned over to the association manager  
20 for issuance of a violation notice.

21 6. The above-mentioned non-compliance letter stated that the RV that was  
22 on the Penningtons’ lot was not in compliance with Board policy and, among other  
23 things, informed the Penningtons that the Committee’s approval to place their RV on  
24 their property was not valid.

25 7. In response to the non-compliance letter, the Penningtons submitted to  
26 the Association a letter dated February 23, 2007 that appears to have been received on  
27 February 27, 2007.

28 8. Although the act being complained of is the issuance of the February 8,  
29 2007 non-compliance letter, that issue subsumes the issue of whether the Committee  
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1 had the authority to grant permission for the Penningtons to have an RV parked on their  
2 property.

3 9. Bruce Johnson (“Mr. Johnson”) testified on behalf of Petitioner. Mr.  
4 Johnson was a member of the Committee at the time when the Penningtons made their  
5 request for permission to park their RV on their property, and was one of two members  
6 of the Committee that signed the approval form.

7 10. Mr. Johnson testified that he was aware that the Association had a rule  
8 that limited the time for which an RV can be granted permission to be placed on a lot,  
9 but believed the rule was not binding on the Committee.

10 11. Mr. Johnson acknowledged that the above-mentioned association rule  
11 was in existence when the Committee granted approval to the Penningtons.

12 12. Section 4.3 of the CC&Rs provides the Association with the authority to  
13 adopt rules and regulations to be known as “The Properties Rules”.

14 13. Pat Norton (“Ms. Norton”), a current Board member, testified that the  
15 Association adopted a property rule pertaining to Section 3.7 of the CC& Rs that was  
16 drafted by the Committee.

17 14. Ms. Norton’s testimony was somewhat inconsistent as to whether the  
18 Committee adopted a rule that limited the time that approval can be granted for placing  
19 an RV on a member’s property. Regardless, credible evidence was presented that  
20 established the Board had adopted a property rule pertaining to Section 3.7 of the  
21 CC&Rs. That property rule provides for loading, unloading, and cleaning of sleeping  
22 units such as RVs and that the units will be allowed on the property for a maximum of  
23 four days.

24 15. Ms. Norton testified that the Association has not taken any action to  
25 enforce the community documents after issuance of the non-compliance letter and no  
26 penalty has been imposed against the Penningtons for having a RV on their property.

27 **CONCLUSIONS OF LAW**

28 1. Petitioner must prove by a preponderance of the evidence that the  
29 Association violated the provisions of A.R.S. § 33-1803(E), Section 3.7 of the CC&Rs  
30 and the property rule pertaining to that section.



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\_\_\_\_ day of \_\_\_\_\_, 2008, to:

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By \_\_\_\_\_