

1 3. Coronado is governed by Homeowner Association documents such as the
2 Declaration of Covenants, Conditions and Restrictions for Coronado Point [sic]
3 Townhomes (“CC&Rs”). See Exhibit A.

4 4. On November 25, 2011, Mr. Leach filed a Petition with the Department of Fire,
5 Building and Life Safety (“Department”) alleging the following:

6 The Board (Dimitrios Boukalis) has refused to provided [sic] CPA Audited
7 Annual Financial Statement since 06/08/2000, to present, for the
8 Owners/Members of the Coronado Pointe Townhomes Association.
9 Copy of email 12-29-2009 shows my request and attorney’s
unprofessional response for financial reports for 1999-2009. (attached)

10 5. On January 13, 2012, Coronado filed an Answer to Petition asserting that the
11 one year statute of limitations applicable to liability arising from a statutory violation
12 precludes Mr. Leach from proceeding in this matter.

13 6. On February 21, 2012, the Department issued a Notice of Hearing to the parties
14 notifying them that Mr. Leach has alleged that Coronado has violated A.R.S. §§ 33-
15 1810, 33-1258(A), 33-1805(A), and 33-1243(J).¹

16 7. At hearing, Mr. Leach asserted that the Board knowingly defrauded the
17 homeowners, and that it has not complied with the CC&Rs and statutes. Mr. Leach
18 testified that he feels the homeowners need the financial statements in order to
19 determine “who has paid what.”

20 8. Ms. Boukalis testified that Mr. Leach and Michael Kollias, another homeowner,
21 were given access to the financial records at Coronado’s attorney’s office. Ms. Boukalis
22 submitted into evidence a copy of a May 21, 2010 letter authored by Coronado’s
23 attorney that stated that Mr. Leach and Mr. Kollias came into her office on that date to
24 review the association financial records and that they signed the Confidentiality
25 Agreements prior to reviewing the records. See Exhibit 1.

26 9. Mr. Leach testified that the documents were inadequate. Mr. Leach requested
27 relief to include the requirement that an accountant review Coronado’s bank statements
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29 _____
30 ¹ A.R.S. §§ 33-1243 and 33-1258 are applicable to condominiums, and the parties stipulated at hearing
that Coronado is a planned community. Therefore, these statutory provisions are inapplicable to this
matter.

1 in order to facilitate Mr. Leach in filing a civil lawsuit for Coronado to reimburse the
2 association for funds that are due.

3
4 **CONCLUSIONS OF LAW**

5 1. In this proceeding, Mr. Leach bears the burden of proving by a preponderance of
6 the evidence that Coronado violated A.R.S. § 33-1805(A) and A.R.S. § 33-1810. See
7 A.A.C. R2-19-119.

8 2. A preponderance of the evidence is “[e]vidence which is of greater weight or more
9 convincing than the evidence which is offered in opposition to it; that is, evidence which as
10 a whole shows that the fact sought to be proved is more probable than not.” BLACK’S LAW
11 DICTIONARY 1182 (6th ed. 1990).

12 3. Pursuant to A.R.S. § 12-541(5), a one year statute of limitations applies to “a
13 liability created by statute” In this case, pursuant to Mr. Leach’s Petition, he
14 requested on December 11, 2009, CPA Audited Annual Financial Statements dating
15 back to June 2000 from Coronado. Mr. Leach filed his Petition on November 25, 2011,
16 almost two years after he made his request. Therefore, Mr. Leach’s Petition is time
17 barred pursuant to A.R.S. § 12-541(5).

18 4. Assuming arguendo that Mr. Leach’s Petition had been timely filed, Mr. Leach
19 argued that Coronado violated A.R.S. §§ 33-1810 and 33-1805(A).

20 5. A.R.S. § 33-1810 specifies the following: “[u]nless any provision in the planned
21 community documents requires an annual audit by a certified public accountant, the
22 board of directors shall provide for an annual financial audit. . . .” Mr. Leach failed to
23 establish that the governing CC&Rs require an annual audit by a certified public
24 accountant, which is exactly what his Petition alleges that Coronado failed to provide.
25 Therefore, Mr. Leach failed to establish a violation of A.R.S. § 33-1810.

26 6. A.R.S. § 33-1805(A) requires that “. . . all financial and other records of the
27 association shall be made reasonably available for examination by any member or any
28 person designated by the member. . . .” The evidence of record established that Mr.
29 Leach and Mr. Kollias went to Coronado’s attorney’s office on May 21, 2010, to review
30

1 the Association financial records. Therefore, Mr. Leach failed to establish that
2 Coronado violated A.R.S. § 33-1805(A).

3 7. The Administrative Law Judge concludes that Mr. Leach's Petition should be
4 dismissed.

5 **RECOMMENDED ORDER**

6 In view of the foregoing, IT IS ORDERED that no action is required of Coronado
7 in this matter and that the Petition be dismissed.

8 *In the event of certification of the Administrative Law Judge Decision by the*
9 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*
10 *days from the date of that certification.*

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12 Done this day, April 30, 2012.

13
14 /s/ Sondra J. Vanella
15 Administrative Law Judge

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17 Transmitted electronically to:

18 Gene Palma, Director
19 Department of Fire Building and Life Safety
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