

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

2
3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 JOHN AND DEBBORAH SELLERS,
8 Petitioners,

No. 12F-H1213003-BFS

9 VS

10 CROSSINGS AT WILLOW CREEK
11 PROPERTY OWNERS ASSOCIATION,
12 Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

13
14 **HEARING:** Prehearing conference on December 12, 2012

15 **APPEARANCES:** Petitioners John and Deborah Sellers appeared on their own
16 behalf. Respondent Crossing at Willow Creek Property Owners Association was
17 represented by Peter Giambanco, Board President

18 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

19
20 **FINDINGS OF FACT**

- 21 1. On August 7, 2012, John and Deborah Sellers (Petitioners) submitted a Petition
22 claiming The Crossings at Willow Creek (Respondent) violated A.R.S. § 33-1806 when
23 it failed to properly disclose information required under the statute to the purchaser of a
24 lot in the planned community.
- 25 2. On August 9, 2012, the Department of Fire, Building and Life Safety
26 (Department) notified Respondent that the Petition had been filed.
- 27 3. On August 29, 2012, Respondent denied any violation identified by the Petition.
- 28 4. On October 19, 2012, the Department sent a Notice of Hearing to the parties
29 indicating a hearing on the matter would be held at 8:00 a.m. on December 12, 2012, at
30 the Office of Administrative Hearings (OAH).

1 5. Prior to the December 12, 2012, hearing, multiple motions were received by OAH
2 and the Administrative Law Judge identified a potential issue as to Petitioners' standing
3 for a hearing within the meaning of A.R.S. § 41-2198.01(B). Therefore, it was ordered a
4 pre-hearing conference and oral arguments on the motions would be heard on
5 December 12, 2012.

6 6. At the pre-hearing conference, Petitioners acknowledged they were not parties to
7 the sale in question as either buyers or sellers and that they had suffered no harm from
8 the alleged failure of Respondent to provide the documents required.

9 **CONCLUSIONS OF LAW**

10 1. Arizona statute provides a list of documents that must be provided to the
11 purchaser or the purchaser's authorized agent within ten days after the association
12 receives written notice of a pending sale of a property within the association. A.R.S. §
13 33-1806.

14 2. Petitioners alleged in the Petition that Respondent failed to provide all the
15 documents to the purchaser of a parcel in the planned community as required in the
16 statute.

17 3. "For a dispute between an owner and a condominium association or planned
18 community association that is regulated pursuant to title 33, chapter 9 or 16, the owner
19 or association may petition the department for a hearing concerning violations of
20 condominium documents or planned community documents or violations of the statutes
21 that regulate condominiums or planned communities." A.R.S. § 41-2198.01(B).

22 4. Petitioners acknowledged they were not a party to the transaction at issue.
23 Consequently, Petitioners do not have a dispute with Respondent within the meaning of
24 A.R.S. § 41-2198.01(B) and lack standing to proceed with a hearing on the merits in this
25 case alleging a violation of A.R.S. § 33-1806, failure to provide documents to
26 purchasers other than Petitioners.

27 5. Because Petitioners failed to demonstrate that they have standing to pursue an
28 administrative action upon which relief can be granted, the Petition should be
29 dismissed.

30 **RECOMMENDED ORDER**

1 In view of the foregoing, IT IS ORDERED that no action is required of
2 Respondent in this matter and that the Petition be dismissed.

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

6 Done this day, January 23, 2013.

7 /s/ Tammy L. Eigenheer
8 Administrative Law Judge

9 Transmitted electronically to:

10
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