

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

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6  
7 EMRY & MURIEL VARHELY,  
8 Petitioners,

**No. 12F-H1213009-BFS**

9 vs

**ADMINISTRATIVE  
LAW JUDGE DECISION**

10 EIGHTH STREET SQUARE TOWNHOUSE  
11 ASSOCIATION,  
12 Respondent.

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13 **HEARING:** February 13, 2013

14 **APPEARANCES:** Muriel Varhely appeared on behalf of Petitioners.

15 Respondent was represented by Nikita Patel, Esq.

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

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17  
18 **RULING**

19 This hearing involved an allegation made by Petitioners Emry and Muriel Varhely  
20 that Eighth Street Square Townhouse Association (Respondent) violated A.R.S. § 33-  
21 1806 by failing to notify them of existing violations at the time they were purchasing a  
22 parcel in the community. The Administrative Law Judge concludes that Petitioners  
23 failed to establish a violation by Respondent.

24 **FINDINGS OF FACT**

- 25 1. Respondent is an association of homeowners located in Phoenix, Arizona.  
26 2. Eighth Street Square has 48 units<sup>1</sup> and is governed by Covenants,  
27 Conditions, and Restrictions (Declaration).  
28 3. In February 2012, Petitioners entered into a contract to purchase a unit in  
29 Eighth Street Square. The unit was owned by ING Bank FSB which acquired title  
30 through foreclosure.

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<sup>1</sup> The units are numbered 1 through 49 without a unit 13.



1           2.     In this proceeding, Petitioners bear the burden of proving by a  
2 preponderance of the evidence that Respondent violated A.R.S. § 33-1806. A.A.C. R2-  
3 19-119.

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

8           4.     A.R.S. § 33-1806 provides, in pertinent part:

9           A.     For planned communities with fewer than fifty units, a member shall  
10 mail or deliver to a purchaser or a purchaser’s authorized agent within ten  
11 days after receipt of a written notice of a pending sale of the unit . . . all of  
12 the following in either paper or electronic format:

13           . . . .

14           3.     A dated statement containing:

15           . . . .

16           (e)    If the statement is being furnished by the association,  
17 a statement as to whether the records of the association reflect any  
18 alterations or improvements to the unit that violate the declaration.  
19 The association is not obligated to provide information regarding  
20 alterations or improvements that occurred more than six years  
21 before the proposed sale. Nothing in this subdivision relieves the  
22 seller of a unit from the obligation to disclose alterations or  
23 improvements to the unit that violate the declaration, nor precludes  
24 the association from taking action against the purchaser of a unit  
25 for violations that are apparent at the time of purchase and that are  
26 not reflected in the association's records.

27           (f)    If the statement is being furnished by the member, a  
28 statement as to whether the member has any knowledge of any  
29 alterations or improvements to the unit that violate the declaration.

30           . . . .

          G.     For the purposes of this section, unless the context otherwise  
requires, “member” means the seller of the unit title and excludes . . . a  
trustee of a deed of trust who is selling the property in a trustee’s sale  
pursuant to chapter 6.1 of this title.

          5.     Petitioners argued Respondent violated A.R.S. § 33-1806 by failing to  
provide them with a statement as to whether the records of the association reflected any  
alterations or improvements to the unit that violated the Declaration within ten days of  
receiving notice of the pending sale of the unit they eventually purchased.



