

1 2. Montezuma is a condominium association consisting of seventeen condominium
2 units located in Lake Montezuma, Arizona.

3 3. Petitioner owns three condominium units in and is a member of Montezuma.

4 4. Petitioner filed a Petition with the Department alleging that Montezuma had violated
5 the provisions of A.R.S. § 33-1247, A.R.S. § 33-1248, A.R.S. § 33-1250, and A.R.S. §
6 33-1805. Petitioner specifically alleged that:

7 a) Montezuma failed to maintain the common areas of
8 Montezuma as required by A.R.S. § 33-1247.

9 b) Montezuma failed to conduct open meetings as required by
10 A.R.S. § 33-1248.

11 c) Montezuma failed to hold proper elections as required by
12 A.R.S. § 33-1250.

13 d) Montezuma failed to provide financial information as
14 required by A.R.S. § 33-1258.

15 5. Respondent's Answer to the Petition provided, in part, as follows:

16 a) That Petitioner was delinquent in paying her association
17 dues to Montezuma.

18 b) That Petitioner was mailed written notice of an association
19 meeting that was held on May 24, 2012. Montezuma asserted
20 that Petitioner failed to attend to the scheduled meeting and
21 failed to inform Montezuma of any issues that she wanted to
22 have addressed.

23 c) Montezuma acknowledged that the former association
24 president had failed to call a meeting for several years.
25 Montezuma stated that very few people ever attended any of
26 the meetings.

27 d) Montezuma stated that Montezuma had been unable to
28 perform some cosmetic maintenance work because Petitioner
29 and two other members had failed to pay their association
30 dues.

Petitioner's Testimony¹

31 6. Petitioner testified that she purchased her first condominium unit in Montezuma
32 during 2003. Petitioner stated that she purchased two additional condominium units in
33 2011. Petitioner testified that she utilizes all three condominium units as rental
34 properties.

¹ 3/28/13 Hearing Record (hereinafter "H.R.") at 18:45-1:25:45.

1 7. Petitioner testified that that she filed the Petition against Montezuma because
2 Montezuma failed to provide maintenance for the common areas of Montezuma.
3 Petitioner stated that the lack of maintenance caused her to become concerned about
4 the financial status of Montezuma and to request financial records from Montezuma.

5 8. Petitioner testified that only two family-sized trash containers are provided for the
6 seventeen condominium units located in Montezuma. Petitioner stated that the two
7 family-sized trash containers are constantly overflowing and that the weeds “are high” in
8 the common areas.

9 9. Petitioner acknowledged that Montezuma had performed some maintenance on the
10 front of the condominium building. Petitioner testified that the rear of the condominium
11 building required proper maintenance and painting. Petitioner stated that there was a
12 broken wall in the common area that had been damaged since 2003.

13 10. Petitioner testified that Montezuma had refused to provide her with the requested
14 financial records until she filed the petition at issue. Petitioner acknowledged that
15 Montezuma has provided the financial records that she requested.

16 11. Petitioner testified that she learned that there had been an association meeting on
17 May 24, 2012, in November 2012. Petitioner stated that she received no notice of the
18 association meeting. Petitioner testified that Montezuma had her email address and
19 that she would have attended the association meeting had she received notice of the
20 association meeting.

21 12. Petitioner acknowledged that she had utilized several different mailing addresses.
22 Petitioner testified that she had provided Montezuma with her current address in one of
23 her emails to Montezuma.

24 13. Petitioner testified that she had received copies of the minutes for the May 24, 2012
25 association meeting. Petitioner stated that there was no election of association officers
26 during the May 24, 2012 association meeting. Petitioner testified that there has not
27 been an election of association officers during the time that she has been a member of
28 Montezuma.

29 **Carol Ann Klagge’s Testimony²**

30 _____
² H.R. at 1:26:50-2:17:25.

1 14. Carol Ann Klagge (hereinafter "Ms. Klagge") testified that she is the treasurer for
2 Montezuma. Ms. Klagge stated that she owns three condominium units in Montezuma.
3 Ms. Klagge testified that six owners of condominium units reside in the State of Arizona.
4 Ms. Klagge stated that the other owners of condominium units live out-of-state. Ms.
5 Klagge testified that most of the condominium units are utilized as rental units.

6 15. Ms. Klagge testified that Petitioner had provided Montezuma with several different
7 addresses.³ Ms. Klagge stated that she mailed written notice of the May 24, 2012
8 association meeting to Petitioner. Ms. Klagge testified that the written notice was not
9 returned to Montezuma as being undeliverable.

10 16. Ms. Klagge testified that she and her husband, Jay Klagge (hereinafter "Mr.
11 Klagge"), and Tony Sturgeon (hereinafter "Mr. Sturgeon") were the only three
12 association members that attended the May 24, 2012 association meeting. Ms. Klagge
13 stated that according to Montezuma's Bylaws, only members in good standing can
14 participate in voting during the association meeting. Ms. Klagge testified that
15 association dues are assessed according to the size of the condominium units, with
16 larger units being assessed at a higher amount of dues than smaller units.

17 17. Ms. Klagge testified that she provided financial statements for Montezuma to all
18 members that attended the May 24, 2012 association meeting. Ms. Klagge stated that
19 she informed Petitioner in a previous email that she would be providing a financial
20 statement for Montezuma for all members who attended the May 24, 2012 association
21 meeting.

22 18. Ms. Klagge testified that Petitioner did not request that the financial statement be
23 provided to her prior to the May 24, 2012 association meeting. Ms. Klagge stated that
24 Petitioner did not attend the May 24, 2012 association meeting.

25 19. Ms. Klagge acknowledged that there was not an election of association officers
26 during the May 24, 2012 association meeting. Ms. Klagge testified that there was no
27 election because only three members were in attendance at the meeting. Ms. Klagge
28 stated that all three members were already all officers of Montezuma and that the three
29 members agreed to continue in their current capacity. Ms. Klagge stated that Mr.

30 _____
³ See Exhibit R-4 (List of addresses for Petitioner).

1 Klagge was the secretary for Montezuma and Mr. Sturgeon was the vice-president for
2 Montezuma. Ms. Klagge testified that they did not want to vote for themselves and that
3 there appeared to be no purpose to have a vote when only three members were present
4 and all three present members were willing to continue in their capacity as officers of
5 the association.

6 20. Ms. Klagge stated that the president of Montezuma had previously resigned and that
7 the position of president had not been filled. Ms. Klagge testified that she offered the
8 position of president of Montezuma to the Petitioner. Ms. Klagge stated that the
9 Petitioner declined the position. Ms. Klagge testified that it was hard to get anyone to
10 help out and that the association needed help.

11 21. Ms. Klagge testified that Montezuma provides a common sewer line and septic tank,
12 trash service, outside maintenance, and insurance for the exterior of the condominiums.
13 Ms. Klagge stated that Montezuma had previously provided for the maintenance of the
14 landscaping for the condominiums, the water for the landscaping, and nighttime exterior
15 security lighting. Ms. Klagge testified that Montezuma was struggling financially and
16 cutbacks in expenditures had to be made.

17 22. Ms. Klagge testified that Montezuma used to have two large multiple-family sized
18 trash dumpsters. Ms. Klagge stated that Montezuma did not have the need or money to
19 provide two large multiple-family sized dumpsters.

20 23. Ms. Klagge testified that the broken wall had been hit by a car. Ms. Klagge stated
21 that Montezuma had not repaired the damaged wall because Montezuma could not
22 afford to repair the wall. Ms. Klagge stated that the broken wall was still functional as a
23 wall.

24 24. Ms. Klagge testified that written notice of the May 24, 2012 meeting was mailed to all
25 members of Montezuma, including the Petitioner. Ms. Klagge stated that no notices
26 were returned to Montezuma as being undeliverable. Ms. Klagge acknowledged that
27 the notice of the meeting did not contain the word "annual" and that it did not mention
28 "elections" as a purpose for the meeting.

29 **25.** Ms. Klagge stated that there was no nomination of officers and no election of officers
30 at the May 24, 2012 meeting. Ms. Klagge testified that only three people were present

1 for the May 24, 2012 meeting. Ms. Klagge acknowledged that the three people present
2 could have conducted a formal election of officers but decided not to. Ms. Klagge
3 stated that Montezuma could not get members to become officers of Montezuma.

4 **Helen Bartels' Testimony⁴**

5 26. Helen Bartels (hereinafter "Ms. Bartels") testified that she owns a condominium unit
6 in Montezuma. Ms. Bartels stated that she used her condominium unit as rental
7 property. Ms. Bartels testified that she received written notice of the May 24, 2012
8 meeting. Ms. Bartels stated that she did not attend the May 24, 2012 meeting. Ms.
9 Bartels testified that she was not an officer of Montezuma. Ms. Bartels stated that
10 Montezuma would be hard-pressed to pay a special assessment. Ms. Bartels testified
11 that if sufficient money was available, the common areas should be maintained.

12 **PROVISIONS OF LAW REFERENCED AT HEARING**

13
14
15 **1. A.R.S. § 12-541(5) provides as follows:**

16 There shall be commenced and prosecuted within one year
17 after the cause of action accrues, and not afterward, the
18 following actions:

- 19 1. For malicious prosecution, or for false imprisonment, or for
20 injuries done to the character or reputation of another by libel or
21 slander.
- 22 2. For damages for seduction or breach of promise of marriage.
- 23 3. For breach of an oral or written employment contract
24 including contract actions based on employee handbooks or
25 policy manuals that do not specify a time period in which to
26 bring an action.
- 27 4. For damages for wrongful termination.
- 28 5. Upon a liability created by statute, other than a penalty or
29 forfeiture.

30 **2. A.R.S. § 33-1247 provides as follows:**

A. Except to the extent provided by the declaration, subsection
C of this section or section 33-1253, subsection B, the
association is responsible for maintenance, repair and
replacement of the common elements and each unit owner is
responsible for maintenance, repair and replacement of the

⁴ H.R. at 2:17:25-2:21:40.

1 unit. On reasonable notice, each unit owner shall afford to the
2 association and the other unit owners, and to their agents or
3 employees, access through the unit reasonably necessary for
4 those purposes. If damage is inflicted on the common elements
5 or any unit through which access is taken, the unit owner
6 responsible for the damage, or the association if it is
7 responsible, is liable for the prompt repair of the damage.

8 B. For any residential rental units that have been declared a
9 slum property by the city or town pursuant to section 33-1905
10 and that are in the condominium complex, the association is
11 responsible for enforcing any requirement for a licensed
12 property management firm that is imposed by a city or town
13 pursuant to section 33-1906.

14 C. In addition to the liability borne by the declarant as a unit
15 owner under this chapter, the declarant alone is liable for the
16 maintenance, repair and replacement of any portion of the
17 common elements which the declarant reserves the right to
18 withdraw from the condominium, as long as the unit owner
19 maintains that right.

20 **3. A.R.S. § 33-1248 provides as follows:**

21 A. Notwithstanding any provision in the declaration, bylaws or
22 other documents to the contrary, all meetings of the unit
23 owners' association and the board of directors, and any
24 regularly scheduled committee meetings, are open to all
25 members of the association or any person designated by a
26 member in writing as the member's representative and all
27 members or designated representatives so desiring shall be
28 permitted to attend and speak at an appropriate time during the
29 deliberations and proceedings. The board may place
30 reasonable time restrictions on those persons speaking during
the meeting but shall permit a member or a member's
designated representative to speak once after the board has
discussed a specific agenda item but before the board takes
formal action on that item in addition to any other opportunities
to speak. The board shall provide for a reasonable number of
persons to speak on each side of an issue. Persons attending
may audiotape or videotape those portions of the meetings of
the board of directors and meetings of the members that are
open. The board of directors of the association may adopt
reasonable rules governing the audiotaping or videotaping of
open portions of the meetings of the board and the
membership, but such rules shall not preclude such

1 audiotaping or videotaping by those attending. Any portion of a
2 meeting may be closed only if that portion of the meeting is
3 limited to consideration of one or more of the following:

4 1. Legal advice from an attorney for the board or the
5 association. On final resolution of any matter for which the
6 board received legal advice or that concerned pending or
7 contemplated litigation, the board may disclose information
8 about that matter in an open meeting except for matters that
9 are required to remain confidential by the terms of a settlement
10 agreement or judgment.

11 2. Pending or contemplated litigation.

12 3. Personal, health or financial information about an individual
13 member of the association, an individual employee of the
14 association or an individual employee of a contractor for the
15 association, including records of the association directly related
16 to the personal, health or financial information about an
17 individual member of the association, an individual employee of
18 the association or an individual employee of a contractor for the
19 association.

20 4. Matters relating to the job performance of, compensation of,
21 health records of or specific complaints against an individual
22 employee of the association or an individual employee of a
23 contractor of the association who works under the direction of
24 the association.

25 5. Discussion of a unit owner's appeal of any violation cited or
26 penalty imposed by the association except on request of the
27 affected unit owner that the meeting be held in an open
28 session.

29 B. Notwithstanding any provision in the condominium
30 documents, all meetings of the unit owners' association and the
board shall be held in this state. A meeting of the unit owners'
association shall be held at least once each year. Special
meetings of the unit owners' association may be called by the
president, by a majority of the board of directors or by unit
owners having at least twenty-five per cent, or any lower
percentage specified in the bylaws, of the votes in the
association. Not fewer than ten nor more than fifty days in
advance of any meeting of the unit owners, the secretary shall
cause notice to be hand delivered or sent prepaid by United

1 States mail to the mailing address of each unit or to any other
2 mailing address designated in writing by the unit owner. The
3 notice of any meeting of the unit owners shall state the time
4 and place of the meeting. The notice of any special meeting of
5 the unit owners shall also state the purpose for which the
6 meeting is called, including the general nature of any proposed
7 amendment to the declaration or bylaws, any changes in
8 assessments that require approval of the unit owners and any
9 proposal to remove a director or officer. The failure of any unit
10 owner to receive actual notice of a meeting of the unit owners
11 does not affect the validity of any action taken at that meeting.

12 C. Notwithstanding any provision in the declaration, bylaws or
13 other condominium documents, for meetings of the board of
14 directors that are held after the termination of declarant control
15 of the association, notice to unit owners of meetings of the
16 board of directors shall be given at least forty-eight hours in
17 advance of the meeting by newsletter, conspicuous posting or
18 any other reasonable means as determined by the board of
19 directors. An affidavit of notice by an officer of the association is
20 prima facie evidence that notice was given as prescribed by
21 this section. Notice to unit owners of meetings of the board of
22 directors is not required if emergency circumstances require
23 action by the board before notice can be given. Any notice of a
24 board meeting shall state the time and place of the meeting.
25 The failure of any unit owner to receive actual notice of a
26 meeting of the board of directors does not affect the validity of
27 any action taken at that meeting.

28 D. Notwithstanding any provision in the declaration, bylaws or
29 other condominium documents, for meetings of the board of
30 directors that are held after the termination of declarant control
of the association, all of the following apply:

1. The agenda shall be available to all unit owners attending.

2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

1 3. A quorum of the board of directors may meet by means of a
2 telephone conference if a speakerphone is available in the
3 meeting room that allows board members and unit owners to
4 hear all parties who are speaking during the meeting.

5 4. Any quorum of the board of directors that meets informally to
6 discuss association business, including workshops, shall
7 comply with the open meeting and notice provisions of this
8 section without regard to whether the board votes or takes any
9 action on any matter at that informal meeting.

10 E. It is the policy of this state as reflected in this section that all
11 meetings of a condominium, whether meetings of the unit
12 owners' association or meetings of the board of directors of the
13 association, be conducted openly and that notices and agendas
14 be provided for those meetings that contain the information that
15 is reasonably necessary to inform the unit owners of the
16 matters to be discussed or decided and to ensure that unit
17 owners have the ability to speak after discussion of agenda
18 items, but before a vote of the board of directors is taken.
19 Toward this end, any person or entity that is charged with the
20 interpretation of these provisions shall take into account this
21 declaration of policy and shall construe any provision of this
22 section in favor of open meetings.

23 F. This section does not apply to timeshare plans or
24 associations that are subject to chapter 20 of this title.

25 **4. A.R.S. § 33-1250 provides as follows:**

26 A. If only one of the multiple owners of a unit is present at a
27 meeting of the association, the owner is entitled to cast all the
28 votes allocated to that unit. If more than one of the multiple
29 owners are present, the votes allocated to that unit may be cast
30 only in accordance with the agreement of a majority in interest
of the multiple owners unless the declaration expressly
provides otherwise. There is majority agreement if any one of
the multiple owners casts the votes allocated to that unit
without protest being made promptly to the person presiding
over the meeting by any of the other owners of the unit.

B. During the period of declarant control, votes allocated to a
unit may be cast pursuant to a proxy duly executed by a unit
owner. If a unit is owned by more than one person, each owner
of the unit may vote or register protest to the casting of votes by
the other owners of the unit through a duly executed proxy. A

1 unit owner may not revoke a proxy given pursuant to this
2 section except by actual notice of revocation to the person
3 presiding over a meeting of the association. A proxy is void if it
4 is not dated or purports to be revocable without notice. The
5 proxy is revoked on presentation of a later dated proxy
6 executed by the same unit owner. A proxy terminates one year
7 after its date, unless it specifies a shorter term or unless it
8 states that it is coupled with an interest and is irrevocable.

9 C. Notwithstanding any provision in the condominium
10 documents, after termination of the period of declarant control,
11 votes allocated to a unit may not be cast pursuant to a proxy.
12 The association shall provide for votes to be cast in person and
13 by absentee ballot and may provide for voting by some other
14 form of delivery. Notwithstanding section 10-3708 or the
15 provisions of the condominium documents, any action taken at
16 an annual, regular or special meeting of the members shall
17 comply with all of the following if absentee ballots are used:

- 18 1. The absentee ballot shall set forth each proposed action.
- 19 2. The absentee ballot shall provide an opportunity to vote for
20 or against each proposed action.
- 21 3. The absentee ballot is valid for only one specified election or
22 meeting of the members and expires automatically after the
23 completion of the election or meeting.
- 24 4. The absentee ballot specifies the time and date by which the
25 ballot must be delivered to the board of directors in order to be
26 counted, which shall be at least seven days after the date that
27 the board delivers the unvoted absentee ballot to the member.
- 28 5. The absentee ballot does not authorize another person to
29 cast votes on behalf of the member.

30 D. Votes cast by absentee ballot or other form of delivery are
valid for the purpose of establishing a quorum.

E. Notwithstanding subsection C of this section, an association
for a timeshare plan as defined in section 32-2197 may permit
votes by a proxy that is duly executed by a unit owner.

1 F. If the declaration requires that votes on specified matters
2 affecting the condominium be cast by lessees rather than unit
3 owners of leased units all of the following apply:

4 1. The provisions of subsections A and B of this section apply
5 to lessees as if they were unit owners.

6 2. Unit owners who have leased their units to other persons
7 shall not cast votes on those specified matters.

8 3. Lessees are entitled to notice of meetings, access to records
9 and other rights respecting those matters as if they were unit
10 owners. Unit owners shall also be given notice, in the manner
11 prescribed in section 33-1248, of all meetings at which lessees
12 may be entitled to vote.

13 G. Unless the declaration provides otherwise, votes allocated to
14 a unit owned by the association shall not be cast.

15 H. This section does not apply to timeshare plans or
16 associations that are subject to chapter 20 of this title.

17 I. For the purposes of this section, "period of declarant control"
18 means the time during which the declarant or persons
19 designated by the declarant may elect or appoint the members
20 of the board of directors pursuant to the condominium
21 documents or by virtue of superior voting power.

22 5. **A.R.S. § 33-1258 provides as follows:**

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

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

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 33-1248.

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.

D. This section does not apply to an association for a timeshare plan that is subject to chapter 20 of this title.

6. **A.R.S. § 33-1260 provides as follows:**

A. For condominiums with fewer than fifty units, a unit owner shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for condominiums with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

1 (a) The telephone number and address of a principal contact
2 for the association, which may be an association manager, an
3 association management company, an officer of the association
4 or any other person designated by the board of directors.

4 (b) The amount of the common expense assessment for the
5 unit and any unpaid common expense assessment, special
6 assessment or other assessment, fee or charge currently due
7 and payable from the selling unit owner. If the request is made
8 by a lienholder, escrow agent, unit owner or person designated
9 by a unit owner pursuant to section 33-1256, failure to provide
10 the information pursuant to this subdivision within the time
11 provided for in this subsection shall extinguish any lien for any
12 unpaid assessment then due against that unit.

11 (c) A statement as to whether a portion of the unit is covered by
12 insurance maintained by the association.

13 (d) The total amount of money held by the association as
14 reserves.

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

23 (f) If the statement is being furnished by the unit owner, a
24 statement as to whether the unit owner has any knowledge of
25 any alterations or improvements to the unit that violate the
26 declaration.

27 (g) A statement of case names and case numbers for pending
28 litigation with respect to the unit filed by the association against
29 the unit owner or filed by the unit owner against the association.
30 The unit owner or the association shall not be required to
disclose information concerning the pending litigation that

1 would violate any applicable rule of attorney-client privilege
2 under Arizona law.

3 (h) A statement that provides "I hereby acknowledge that the
4 declaration, bylaws and rules of the association constitute a
5 contract between the association and me (the purchaser). By
6 signing this statement, I acknowledge that I have read and
7 understand the association's contract with me (the purchaser). I
8 also understand that as a matter of Arizona law, if I fail to pay
9 my association assessments, the association may foreclose on
10 my property." The statement shall also include a signature line
11 for the purchaser and shall be returned to the association within
12 fourteen calendar days.

13 4. A copy of the current operating budget of the association.

14 5. A copy of the most recent annual financial report of the
15 association. If the report is more than ten pages, the
16 association may provide a summary of the report in lieu of the
17 entire report.

18 6. A copy of the most recent reserve study of the association, if
19 any.

20 7. A statement summarizing any pending lawsuits, except those
21 relating to the collection of assessments owed by unit owners
22 other than the selling unit owner, in which the association is a
23 named party, including the amount of any money claimed.

24 B. A purchaser or seller who is damaged by the failure of the
25 unit owner or the association to disclose the information
26 required by subsection A of this section may pursue all
27 remedies at law or in equity against the unit owner or the
28 association, whichever failed to comply with subsection A of
29 this section, including the recovery of reasonable attorney fees.

30 C. The association may charge the unit owner a fee of no more
than an aggregate of four hundred dollars to compensate the
association for the costs incurred in the preparation of a
statement or other documents furnished by the association
pursuant to this section for purposes of resale disclosure, lien
estoppel and any other services related to the transfer or use of
the property. In addition, the association may charge a rush fee
of no more than one hundred dollars if the rush services are
required to be performed within seventy-two hours after the

1 request for rush services, and may charge a statement or other
2 documents update fee of no more than fifty dollars if thirty days
3 or more have passed since the date of the original disclosure
4 statement or the date the documents were delivered. The
5 association shall make available to any interested party the
6 amount of any fee established from time to time by the
7 association. If the aggregate fee for purposes of resale
8 disclosure, lien estoppel and any other services related to the
9 transfer or use of a property is less than four hundred dollars on
10 January 1, 2010, the fee may increase at a rate of no more
11 than twenty per cent per year based on the immediately
12 preceding fiscal year's amount not to exceed the four hundred
13 dollar aggregate fee. The association may charge the same fee
14 without regard to whether the association is furnishing the
15 statement or other documents in paper or electronic format.

16
17 D. The fees prescribed by this section shall be collected no
18 earlier than at the close of escrow and may only be charged
19 once to a unit owner for that transaction between the parties
20 specified in the notice required pursuant to subsection A of this
21 section. An association shall not charge or collect a fee relating
22 to services for resale disclosure, lien estoppel and any other
23 services related to the transfer or use of a property except as
24 specifically authorized in this section. An association that
25 charges or collects a fee in violation of this section is subject to
26 a civil penalty of no more than one thousand two hundred
27 dollars.

28
29 E. This section applies to a managing agent for an association
30 that is acting on behalf of the association.

F. A sale in which a public report is issued pursuant to sections
32-2183 and 32-2197.02 or a sale pursuant to section 32-
2181.02 is exempt from this section.

G. This section does not apply to timeshare plans or
associations that are subject to chapter 20 of this title.

H. For the purposes of this section, unless the context
otherwise requires, "unit owner" means the seller of the
condominium unit title and excludes any real estate
salesperson or real estate broker who is licensed under title 32,
chapter 20 and who is acting as a salesperson or broker, any
escrow agent who is licensed under title 6, chapter 7 and who
is acting as an escrow agent and also excludes a trustee of a

1 deed of trust who is selling the property in a trustee's sale
2 pursuant to chapter 6.1 of this title.

3 **7. A.R.S. § 33-1805 provides as follows:**

4 A. Except as provided in subsection B of this section, all
5 financial and other records of the association shall be made
6 reasonably available for examination by any member or any
7 person designated by the member in writing as the member's
8 representative. The association shall not charge a member or
9 any person designated by the member in writing for making
10 material available for review. The association shall have ten
11 business days to fulfill a request for examination. On request
12 for purchase of copies of records by any member or any person
13 designated by the member in writing as the member's
14 representative, the association shall have ten business days to
15 provide copies of the requested records. An association may
16 charge a fee for making copies of not more than fifteen cents
17 per page.

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

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

23 2. Pending litigation.

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

27 4. Personal, health or financial records of an individual member
28 of the association, an individual employee of the association or
29 an individual employee of a contractor for the association,
30 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

1 contractor of the association who works under the direction of
2 the association.

3 C. The association shall not be required to disclose financial
4 and other records of the association if disclosure would violate
5 any state or federal law.

6 **By-Laws cited during hearing**

7 **8. Section 3: Annual Meetings⁵**

8 The general agenda of the meeting, convened and conducted
9 by the President, is as follows:

- 10 a. Call to Order.
- 11 b. Reading of the Minutes of the previous meeting.
- 12 c. Reading of the Treasurer's Report.
- 13 d. Reading of the President's Report.
- 14 e. Old Business.
- 15 f. New Business.
- 16 g. Election of Officers.
- 17 h. Adjournment.

18
19 **9. Section 5: Elections and Officers⁶**

20 The Offices of the Association include President, Vice
21 President, Treasurer and Secretary. These offices are subject
22 to the following guidelines:

- 23 a. Only members can nominate candidates to these offices.
- 24 b. Only members can vote for candidates for these offices.
- 25 c. Only duly elected members can hold these offices.
- 26 d. A member can only hold one office at any given time.

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⁵ See Exhibit No. R-7 (By-Laws).

⁶ See Exhibit No. R-7 (By-Laws).

1 e. Officers must be elected by a majority vote (at least 51% of
2 the lots represented by eligible voters) present at the meeting
by presence or proxy.

3 f. Elections can only take place during formally announced
4 meeting[s] of the Association.

5
6 **CONCLUSIONS OF LAW**

7
8 1. A.R.S. § 41-2198.01 permits an owner or a condominium association to file a
9 petition with the Department for a hearing concerning violations of planned community
10 documents or violations of statutes that regulate planned communities. That statute
11 provides that such petitions will be heard before the Office of Administrative Hearings.

12 2. The burden of proof at an administrative hearing falls to the party asserting a
13 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
14 preponderance of the evidence. See A.A.C. R2-19-119.

15 3. Proof by “preponderance of the evidence” means that it is sufficient to persuade
16 the finder of fact that the proposition is “more likely true than not.” *In re Arnold and*
17 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

18 4. Credible testimony and evidence established that the common areas of
19 Montezuma contain a broken wall that requires correction, weeds, inadequately sized
20 overflowing trash containers, and peeling paint on the exterior of the condominiums.
21 This Tribunal concludes that Montezuma failed to maintain the common areas of the
22 association in violation of the charged provision of A.R.S. § 33-1247.

23 5. Credible testimony and evidence established that Montezuma conducted an
24 annual meeting on May 24, 2012. Notice of the meeting was mailed to Complainant in
25 accordance with applicable statute. Petitioner failed to attend the May 24, 2012
26 meeting. This Tribunal concludes that Petitioner failed to meet her burden of proving
27 that Montezuma violated the charged provision of A.R.S. § 33-1248.

28 6. Montezuma failed to hold proper elections as required by applicable statute.
29 Montezuma failed to hold proper elections as required by the provisions of section five
30

1 of Montezuma's By-Laws. This Tribunal concludes that Montezuma violated the
2 charged provision of A.R.S. § 33-1250.

3 7. Credible testimony and evidence established that Petitioner requested financial
4 information from Montezuma via email on August 12, 2011. Montezuma responded to
5 Petitioner's email but did not provide the requested financial information. There was no
6 dispute that Montezuma provided Petitioner with the requested financial information
7 prior to the administrative hearing. Petitioner sustained her burden of proving by a
8 preponderance of the evidence that Montezuma failed to provide Petitioner with the
9 requested financial reports within the ten (10) day period provided by A.R.S. § 32-1258.
10 This Tribunal concludes that Montezuma violated the charged provision A.R.S. § 33-
11 1258.

12
13 **RECOMMENDED ORDER**

14
15 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
16 party in this matter for three (3) of the four (4) violations charged in her petition.⁷

17 It is further ORDERED that Montezuma fully comply with the applicable
18 provisions of A.R.S. § 33-1247, A.R.S. § 33-1250, and A.R.S. § 1258 in the future.

19 It is further ORDERED that Montezuma pay Petitioner One Thousand Five
20 Hundred Dollars (\$1,500.00), which constitutes three fourths (3/4^{ths}) of her filing fee
21 of Two Thousand dollars (\$2,000.00), to be paid to the Department in this matter
22 within ninety (90) days of this Order.

23 It is further ORDERED that Montezuma provide written proof to the Department
24 within one hundred and eighty (180) days of this Order that (1) the broken wall has
25 been properly corrected, (2) the weeds in the common areas have been eliminated
26 or properly controlled, and (3) all peeling paint on the exterior of the condominium
27 units has been properly corrected.

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⁷ This Tribunal finds that all four alleged violations were of equal substance.

