

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**

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7 RANDALL C. AND LORI M. HACK FAMILY  
8 TRUST,

9 Petitioners,

10 vs

11 THE RANCH AT PRESCOTT HOA,

12 Respondent.

**No. 13F-H1313002-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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17 **HEARING:** June 17, 2013, at 8:00 a.m.

18 **APPEARANCES:** Randall C. and Lori M. Hack Family Trust (hereinafter  
19 “Petitioners”) appeared through Randall C. Hack. The Ranch at Prescott HOA  
20 (hereinafter the “Ranch”) appeared through its attorney, D. Reid Garrey, Esq., Garrey,  
21 Woner, Hoffmaster & Peshek, P.C.

22 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

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25 Evidence and testimony were presented and the following Findings of Fact,  
26 Conclusions of Law and Recommended Order are made:

27 **FINDINGS OF FACT**

28 1. The single issue presented in this matter is whether or not the Ranch can require  
29 its property owners to use a particular type of sign frame to display industry standard  
30 signs. Petitioners’ realtor installed a white wooden “L” type of sign frame with a  
standard size for-sale sign on their property. On or about January 1, 2012 the Ranch’s

1 rule regarding the use of metal "H" sign frame was placed into effect by the Ranch. The  
2 Ranch notified Petitioners of its rule requiring the use of metal "H" types sign frames.  
3 Petitioners declined to change their wooden sign frame and filed a petition with the  
4 Department.

5 2. The Department of Fire, Building and Life Safety (the "Department") is authorized  
6 by statute to receive Petitions for Hearings from members of homeowners' associations  
7 and from homeowners' associations in Arizona.

8 3. The Ranch is a homeowners' association ("HOA") located in Prescott, Arizona.

9 4. Petitioners own a residential lot in, and are members of, the Ranch.

10 5. Petitioners filed a petition with the Department alleging that the Ranch had  
11 violated the provisions of A.R.S. § 33-1808(F). Petitioner specifically alleged as follows:

12 With respect to real estate for sale...an association shall not  
13 prohibit in any way other than as is specifically authorized by this  
14 section or otherwise regulate...use and placement. The Ranch  
15 HOA on January 16, 2013, sent us a letter of violation stating that  
16 'the use of a metal "H" sign frame is required per their governing  
17 documents.

18 6. The Ranch then filed a written response stating that it had not violated the  
19 charged provision of A.R.S. § 33-1808(F).

20 7. The parties were unable to resolve their dispute and Petitioners requested an  
21 administrative hearing.

### 22 **Testimony of Randall C. Hack**

23 8. Randall C. Hack (hereinafter "Mr. Hack") provided a brief "history" of the various  
24 amendments that had been made to A.R.S. § 33-1808(F). Mr. Hack testified that the  
25 Petitioners' property in the Ranch is for sale. Mr. Hack stated that Petitioners' realtor  
26 had provided Petitioners with an industry standard for-sale sign that is 18" by 24" and a  
27 sign rider that was 6" x 24". Mr. Hack testified that the for-sale sign and rider were  
28 attached to an industry standard, wooden white "L" type frame. Mr. Hack stated that the  
29 for-sale sign, with its attached rider, was installed on Petitioners' lot at the Ranch.

30 9. Mr. Hack testified that on or about January 16, 2013, Petitioner received a letter  
of violation from the Ranch. Mr. Hack stated that the letter stated that the use of a

1 metal "H" sign frame was required per the Ranch's governing documents.

2 10. Mr. Hack acknowledged that the Ranch provided the metal "H" sign frames to  
3 property owners for free. Mr. Hack stated that his realtor had to change out several for-  
4 sale signs that the realtor had posted at the Ranch. Mr. Hack testified that his realtor  
5 was required to pay a handy-man to switch the signs from the "L" shaped wooden  
6 frames to the "H" shaped metal frames provided by the Ranch.

7 11. Mr. Hack testified that he had repeated conversations with the Ranch about the  
8 Ranch's sign frame rule. Mr. Hack stated that the Legislature had amended the  
9 provisions of A.R.S. § 33-1808(F) three times to prevent homeowner associations from  
10 restricting property-owners' real estate signs. Mr. Hack testified that the Ranch's  
11 apparent attempt to justify its actions by the legal doctrine of *Inclusio unius est exclusio*  
12 *alterius*. (The inclusion of one is the exclusion of another) was inappropriate in this  
13 matter. Mr. Hack stated that A.R.S. § 33-1808(F) specifically provides what a  
14 homeowners association can regulate not what it cannot regulate.

15 12. Mr. Hack testified that the statute specifically restricted a homeowners'  
16 association, such as the Ranch, ability to regulate for-sale signs. Mr. Hack stated that  
17 homeowner associations could only require that for-sale signs be commercially  
18 produced standard size signs. Mr. Hack stated that the Ranch rule regarding the use of  
19 "H" shaped metal sign frames violated the provisions of A.R.S. § 33-1808(F).

20 13. Mr. Hack testified that he contacted a representative in the State legislature and  
21 obtained a memorandum<sup>1</sup> from the Arizona Legislative Council in support of his  
22 position. The memorandum from the Arizona Legislative Council provides, in relevant  
23 part, as follows:

24 The statute plainly provides that the prohibition on regulating "for  
25 sale" signs is broad and generalized, and that the only forms of  
26 regulation that are permitted for associations are that they may  
27 require commercially produced standard sized signs.

28 14. Mr. Hack testified that the white wooden "L" shaped sign frame utilized by  
29 Petitioners is an industry standard sized sign frame displaying industry standard sized  
30 signs. Mr. Hack stated that there were no structural issues with the wooden sign frame.

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<sup>1</sup> See Exhibit No. C-8 (Arizona Legislative Council Memorandum 6/7/13)

1 15. Mr. Hack testified that Representatives of the Ranch indicated that the Ranch's  
2 requirement that metal "H" sign frames be utilized in the Ranch was based on the  
3 Ranch's interest in keeping the Ranch aesthetically pleasing and to prevent danger from  
4 fallen or damaged sign frames. Mr. Hack stated that the Ranch already had a Signage  
5 Guidelines and Policy<sup>2</sup> that specifically regulated fallen or empty sign frames.

6 16. Mr. Hack testified that the Ranch's new sign frame policy requiring the use of  
7 metal "H" sign frames furnished by the Ranch was unnecessary. Mr. Hack stated that  
8 use of the new metal "H" frames did not make the for-sale signs look better. Mr. Hack  
9 testified that metal "H" frames have a metal bar that often keeps the signs from being  
10 properly placed in the ground.

11 17. Mr. Hack testified that the Ranch was not requiring the use of "H" type metal sign  
12 frames for use in "Unit 8." Mr. Hack stated that the property in "Unit 8" was owned by  
13 the developer of the Ranch. Mr. Hack testified that the owner of "Unit 8" was not  
14 required to comply with the same rules as Petitioners despite the fact that "Unit 8" was  
15 part of the Ranch. Mr. Hack stated that the Ranch had failed to apply its sign frame rule  
16 in a consistent and fair manner.

17 18. Mr. Hack acknowledged that there was a waiver provision in the Ranch's rule  
18 regarding the use of metal "H" frames. Mr. Hack testified that the Ranch did not have  
19 the power to regulate sign frames.

20 19. Mr. Hack acknowledged that A.R.S. § 33-1808(F) does not specifically address  
21 sign frames. Mr. Hack testified that he believed that the Ranch could regulate sign  
22 frames to the extent that the sign frames had to be industry standard sign frames that  
23 displayed industry standard size signs. Mr. Hack testified that the white wooden "L"  
24 shaped sign frame that was placed on Petitioners' lot was an industry standard sign  
25 frame.

26 20. Mr. Hack's testimony is found to be credible.

27 **Testimony of Lori M. Hack.**

28 21. Lori M. Hack (hereinafter "Mrs. Hack") testified that Petitioners had owned their  
29 property at the Ranch since 2005. Mrs. Hack stated that she contacted her realtor and  
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<sup>2</sup> See Exhibit No. C-11 (Signage Guideline and Policy for the Ranch).

1 objected to the new sign frame policy for the Ranch when sign frame policy first came  
2 out. Mrs. Hack acknowledged that she did not contact the Ranch directly.

3 22. Mrs. Hack testified that she had previous experience as a realtor. Mrs. Hack  
4 stated that the white wooden "L" shaped sign frame was an industry standard sign  
5 frame that was utilized in the majority of real estate listings.

6 23. Mrs. Hack's testimony is found to be credible.

7 **.Testimony of Richard John Tetreault.**

8 24. Richard John Tetreault (hereinafter "Mr. Tetreault") testified that he is chairman  
9 of the Ranch. Mr. Tetreault stated that the Ranch instituted the sign frame rule because  
10 of safety concerns. Mr. Tetreault testified that fallen and neglected sign frames were a  
11 potential safety hazards.

12 25. Mr. Tetreault testified that in many instances the Ranch's policy regarding sign  
13 frame maintenance had resolved issues regarding fallen or neglected sign frames. Mr.  
14 Tetreault stated that the sign frames in "Unit 8" should comply with the metal "H" sign  
15 post rule. Mr. Tetreault testified that he was not aware of the type of sign frames that  
16 were installed in "Unit 8."

17 26. Mr. Tetreault testified that the Ranch asked realtors and property owners for  
18 feedback on the new sign frame rule. Mr. Tetreault stated that the Ranch received no  
19 response. Mr. Tetreault testified that if the Ranch had received negative feedback from  
20 the property owners in the Ranch the rule regarding the use of metal "H" sign frames  
21 would not have been kept.

22 27. Mr. Tetreault testified that the Ranch had reviewed the sign frame rule with its  
23 attorney before putting the rule regarding the use of metal "H" sign frames into effect.  
24 Mr. Tetreault stated that he had contacted two different attorneys and had been assured  
25 that the institution of the new rule regarding the use of metal "H" sign frames was not in  
26 violation of A.R.S. § 33-1808(F).

27 28. Mr. Tetreault testified that the Ranch offered Petitioners a waiver for the use of a  
28 wooden sign frame instead of the metal "H" frame provided by the Ranch. Mr. Tetreault  
29 stated that the Ranch would have had to review and approve the use of the alternative  
30 sign frame selected by Petitioners before the waiver would be approved.

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2 **PROVISIONS OF LAW REFERENCED AT HEARING**  
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4 1. A.R.S. § 33-1808(F) reads as follows::

5 F. Notwithstanding any provision in the community documents, an  
6 association shall not prohibit or charge a fee for the use of,  
7 placement of or the indoor or outdoor display of a for sale, for rent  
8 or for lease sign and a sign rider by an association member on  
9 that member's property in any combination, including a sign that  
10 indicates the member is offering the property for sale by owner.  
11 The size of a sign offering a property for sale, for rent or for lease  
12 shall be in conformance with the industry standard size sign,  
13 which shall not exceed eighteen by twenty-four inches, and the  
14 industry standard size sign rider, which shall not exceed six by  
15 twenty-four inches. This subsection applies only to a commercially  
16 produced sign, and an association may prohibit the use of signs  
17 that are not commercially produced. With respect to real estate for  
18 sale, for rent or for lease in the planned community, an  
19 association shall not prohibit in any way other than as is  
20 specifically authorized by this section or otherwise regulate any of  
21 the following:

22 1. Temporary open house signs or a member's for sale sign. The  
23 association shall not require the use of particular signs indicating  
24 an open house or real property for sale and may not further  
25 regulate the use of temporary open house or for sale signs that  
26 are industry standard size and that are owned or used by the  
27 seller or the seller's agent.

28 2. Open house hours. The association may not limit the hours for  
29 an open house for real estate that is for sale in the planned  
30 community, except that the association may prohibit an open  
house being held before 8:00 a.m. or after 6:00 p.m. and may  
prohibit open house signs on the common areas of the planned  
community.

3. An owner's or an owner's agent's for rent or for lease sign  
unless an association's documents prohibit or restrict leasing of a  
member's property. An association shall not further regulate a for  
rent or for lease sign or require the use of a particular for rent or  
for lease sign other than the for rent or for lease sign shall not be  
any larger than the industry standard size sign of eighteen by  
twenty-four inches on or in the member's property. If rental or

1 leasing of a member's property is not prohibited or restricted, the  
2 association may prohibit an open house for rental or leasing being  
3 held before 8:00 a.m. or after 6:00 p.m.

4 **CONCLUSIONS OF LAW**

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

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

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

16 4. The use of the white wooden "L" shaped sign frame installed on Petitioners'  
17 property is an industry standard type of sign frame utilized by realtors to display for-sale  
18 or for-rent/lease signs. A.R.S. § 33-1808(F) prohibits a homeowners association, such  
19 as the Ranch, from requiring the use of specific for-sale signs furnished by the  
20 homeowners association. Ranch asserts that since A.R.S. § 33-1808(F) does not  
21 specifically address sign frames that the Ranch may, in the interest of aesthetics and  
22 safety, require the use of the "H" type sign frames for displaying for-sale signs. A.R.S. §  
23 `33-1808(F) provides that the only types of regulations that a homeowners association,  
24 such as the Ranch, can impose on for-sale signs are that the signs be commercially  
25 produced standard size signs. The statute specifically allows only two restrictions on a  
26 property owner's real estate signs, (1) that they be standard size and (2) that they be  
27 commercially produced. Any other requirement by a homeowners association is  
28 precluded.  
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1 5. The Ranch's requirement that property owners utilize a particular type of sign  
2 frame furnished by the Ranch is precluded by A.R.S. § 33-1808(F). This Tribunal  
3 concludes that the Ranch violated the charged provision of A.R.S. § 33-1808(F).  
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5 **RECOMMENDED ORDER**

6 In view of the foregoing, it is ORDERED that Petitioners be deemed the  
7 prevailing party in this matter.

8 It is further ORDERED that the Ranch comply with the applicable provisions of  
9 A.R.S. § A.R.S. § `33-1808(F) in the future.

10 It is further ORDERED that the Ranch pay Petitioners their filing fee of \$550.00,  
11 to be paid to the Department in this matter within thirty (30) days of this Order.

12 It is further ORDERED that the Ranch pay a civil penalty in the amount of  
13 \$200.00 to the Department within thirty (30) days of the date of this Order.<sup>3</sup>

14 *In the event of certification of the Administrative Law Judge Decision by the*  
15 *Director of the Office of Administrative Hearings, the effective date of this Order will*  
16 *be five (5) days from the date of that certification.*

17  
18 Done this day, June 27, 2013.

19 /s/ M. Douglas  
20 Administrative Law Judge  
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24 <sup>3</sup>A.R.S. § 41-2198.02 provides as follows:

25 A. The administrative law judge may order any party to abide by the statute, condominium documents,  
26 community documents or contract provision at issue and may levy a civil penalty on the basis of each  
27 violation. For purposes of actions brought under the Arizona mobile home parks residential landlord and  
28 tenant act, the civil penalty shall not exceed five hundred dollars. All monies collected pursuant to this  
29 article shall be deposited in the state general fund to be used to offset the cost of administering the  
30 administrative law judge function, except that monies collected from disputes involving condominiums or  
planned communities as prescribed in section 41-2198.01, subsection B shall be deposited in the  
condominium and planned community hearing office fund established by section 41-2198.05. If the  
petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the  
filing fee required by section 41-2198.01.

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Transmitted electronically to:  
Gene Palma, Director  
Department of Fire Building and Life Safety