

1 7.9.1 The Association shall have the authority to enter into the
2 Reciprocal Easement Agreement and to perform all of its obligations
3 thereunder, and no consent or approval of Members or any other Person
4 is required in connection therewith;

5 7.9.3 Except to the extent that the Reciprocal Easement
6 Agreement expressly requires the approval of Members with respect to
7 any matter, the Board shall have the power and authority (without the
8 consent of any Members or any other Person) to make decisions and take
9 all actions by, for and on behalf of the Association pursuant to the
10 Reciprocal Easement Agreement.

11 Section 5.1 of the REMA provides that “[t]he Golf Course Property shall be used solely
12 and exclusively for Golf Course Use or as open space and for no other purposes.”
13 Article 12 of the REMA provides that “no termination, cancellation, change, modification
14 or amendment of Paragraph 5.1 . . . of the [REMA] shall be made without the written
15 approval thereof by the number of Members required to amend the Declaration
16 pursuant to Section 14.2 thereof.” Section 14.2 of the Declaration requires that any
17 amendment of the Declaration requires the approval of two-thirds of the members of the
18 Association.

19 In 2011, the Association’s Board of Directors voted on two occasions to amend
20 the REMA to revise the definition of “Golf Course Property” set forth in Recital C of the
21 REMA (Revisions). Because there was disagreement as to whether the Revisions
22 required approval from the members detailed in Article 12 of the REMA and based on
23 the advice of counsel, the Board voted for and recorded Notices of Errata, which stated
24 that the Revisions were purportedly void and unenforceable.

25 At no time did any member of the Association file an action in court or with the
26 Department of Fire Building and Life Safety (Department) alleging that the Revisions
27 were made in contravention to the requirements of Article 12 of the REMA.

28 In 2014, litigation began between the Association and Jaguar as to the REMA
29 and the validity of the Revisions and the Notices of Errata. In July 2015, the Association
30 and Jaguar entered into settlement negotiations. As a part of the settlement discussion,
Jaguar required that the Association withdraw the Notices of Errata. At the July 2015
Board meeting, the Board voted to record Notices of Withdrawal as to the Notices of

1 Errata. On July 31, 2015, the Association and Jaguar executed a final settlement
2 agreement. On August 4, 2015, the Notices of Withdrawal of Notices of Errata and
3 Certificates of Correction for the Revisions to the REMA (Withdrawals) were recorded.
4 On August 7, 2015, the court dismissed the litigation with prejudice.

5 On August 12, 2015, Petitioner filed the instant Single Issue Petition with the
6 Department in which Petitioner alleged that the Association violated Section 14.2 of the
7 Declaration and Article 5 § 5.1, and Article 12 of the REMA. Specifically, Petitioner
8 identified the factual basis of the complaint as follows:

9 On July 22, 2015, the Board, in a 4-1 vote, voted to withdraw the Notices
10 of Erratas (recorded in 2011) and to allow the Golf Course Owner to use
11 portions of the Golf Course Property in a manner other than as open
12 space and/or golf course, even though the proposed change to the Use
Restriction had not received the written approval of the required number of
members.

13 Because Petitioner's complaint specifically concerns the July 22, 2015 vote to
14 record the Withdrawals, the Revisions that occurred in 2011 and their compliance with
15 the community documents is not at issue.

16 Respondent argued that the Withdrawals were essentially meaningless because
17 they merely alerted the public that there may have been some issue with the Revisions,
18 but by themselves, had no legal effect, and the Withdrawals did not render the
19 Revisions valid. Respondent also asserted that the Notices of Errata and Withdrawals
20 were not amendments of the community documents and therefore were beyond the
21 jurisdiction of this tribunal. Petitioner argued that any use restrictions must be recorded
22 and the Withdrawals essentially ratified the Revisions. Petitioner also asserted that
23 even if the Withdrawals were meaningless as Respondent maintained, Petitioner was
24 "entitled to the relief she requested because the [Revisions] are void and unenforceable
25 as a matter of law."

26 **Discussion**

27 The Department has jurisdiction to hear disputes between a property owner and
28 a planned community association regarding violations of planned community
29 documents. A.R.S. § 41-2198.01(B). Community documents are the "declaration,
30 bylaws, articles of incorporation, if any, and rules, if any." A.R.S. § 33-1802. This

1 tribunal has the authority to order the Association to abide by community documents
2 and applicable statutes and imposing civil penalties for violations of community
3 documents and applicable statutes. A.R.S. § 41-2198.02(A).

4 As previously mentioned, the instant petition involves only the Withdrawals and
5 whether the recording of the Withdrawals was a violation of the planned community
6 documents. Respondent did not allege the Revisions were valid, but that the
7 Withdrawals did not constitute an amendment to the REMA or any community
8 documents, and therefore could not be a violation of the community documents.

9 While Petitioner asserted that land use restrictions must be recorded, Petitioner
10 did not provide any authority to indicate that Notices of Errata have any legal effect on a
11 previously recorded land use restriction such that the Withdrawals would have a similar
12 legal effect. While the Notices of Errata may have given the public notice that the
13 Revisions were not validly executed, that is not to say that they rescinded the
14 Revisions.¹ Similarly, it cannot be said that the Withdrawals had the effect of ratifying
15 the Revisions.

16 Because the Withdrawals had no legal effect amending the Declaration, the vote
17 of the Board to record the Withdrawals, without a two-thirds vote of the members was
18 not a violation of the Declaration.

19 **Conclusion**

20 In view of the foregoing, it is recommended that the Complaint in this matter be
21 dismissed.

22 *In the event of certification of this Administrative Law Judge Decision by the*
23 *Director of the Office of Administrative Hearings, the effective date of these Orders will*
24 *be 40 days from the date of the certification.*

25 Done this day, April 18, 2016.

26 /s/ Tammy L. Eigenheer
27 Administrative Law Judge
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¹ This is demonstrated by the litigation between Jaguar and the Association involving the Revisions.

Transmitted electronically to:

Debra Blake, Interim Director
Department of Fire Building and Life Safety

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