

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Barbara G Kunkel
3 v.
4 Agua Dulce Homeowner Association

No. 25F-H092-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 **HEARING:** January 9, 2026

6 **APPEARANCES:**

7 Petitioner: Barbara Kunkel

8 Respondent: Sean Moynihan, Esq.

9 Patricia Stracicia

10 Cindy Reilly

11 Jena Carpenter

12 **ADMINISTRATIVE LAW JUDGE:** Nedra-Su Kawasaki

13 **EXHIBITS ADMITTED INTO EVIDENCE:** Notice of Hearing File, provided by the
14 Department of Real Estate. Petitioner's Exhibits 3 and 7.

15
16 **FINDINGS OF FACT**

17 **PETITIONER'S CLAIM**

- 18 1. Agua Dulce Homeowners Association (Respondent) was a planned
19 community association in Tucson, Arizona.
- 20 2. Barbara G. Kunkel (Petitioner) owned a home located at 4164 West
21 Winter Wash Drive and was a member of Respondent.
- 22 3. On or about October 22, 2025, Petitioner filed a petition with the Arizona
23 Department of Real Estate (Department) alleging that Respondent had violated Planned
24 Community Statutes, A.R.S. §§ 33-1804(B) and 33-1813(D). The issue identified in the
25 petition, for which Petitioner paid the requisite \$500.00 filing fee, was as follows:

26 Under A.R.S. § 33-1804(B), the HOA failed to provide the required ten day
27 advance notice for the July 3, 2025, recall meeting, as the envelopes
28 containing the notice and ballots were postmarked June 24 – two days
29 past the latest permissible mailing date of June 22; and because no lawful
30 recall meeting occurred as a result, A.R.S. § 33-1813(D) mandates that

1 the entire Board should have been automatically removed effective July 2,
2 2025.¹

3 4. Respondent, through Cindy Reilly, filed a written answer to the petition,
4 denying all complaint items.²

5 5. The Department referred the petition to the Office of Administrative
6 Hearings, an independent state agency, for an evidentiary hearing.

7 6. A hearing was held on January 9, 2026. Administrative Notice was taken
8 of the agency record.

9 **REFERENCED STATUTES AND POLICES**

10 7. A.R.S. § 33-1804(B) provides as follows, in pertinent part:

11 Special meetings of the members' association may be called by the
12 president, by a majority of the board of directors or by members having at
13 least twenty-five percent, or any lower percentage specified in the bylaws,
14 of the votes in the association. Not fewer than ten or more than fifty days
15 in advance of any meeting of the members the secretary shall cause
16 notice to be hand delivered or sent prepaid by United States mail to the
17 mailing address for each lot, parcel or unit owner or to any other mailing
18 address designated in writing by a member.

16 8. A.R.S. § 1-243(A) provides as follows:

17 Except as provided in subsection B, the time in which an act is required to
18 be done shall be computed by excluding the first day and including the last
19 day, unless the last day is a holiday, and then it is also excluded.

19 9. USPS Domestic Mail Manual (DMM) § 604.4.6.2 provides as follows, in
20 pertinent part:

21 The date or period when mailers may deposit or present metered mail for
22 mailing is controlled by the mailing date in the indicia under the following
23 conditions.

24 a. Complete Date. Mailpieces bearing a complete date in the
25 indicia must be deposited or presented on that date, except that
26 pieces entered after the day's last scheduled collection from the
27 Post Office or collection box may bear the actual date of entry or
28 the date of the next scheduled collection from the Post Office or
29 collection box.

28 ¹ Not. of Hr'g. File, Homeowners Association (HOA) Dispute Process Petition (all errors included in
29 original.)

29 ² *Id.*, Respondent Response to Petition 25F-H092

10. USPS DMM § 604.4.6.3 provides as follows, in pertinent part:

Mailers must deposit or enter mailpieces with metered or PC Postage indicia according to the following conditions:

a. Mailers may deposit Priority Mail Express (including Flat Rate), Priority Mail (including Flat Rate), retail First-Class Mail, USPS Ground Advantage — Retail, retail Media Mail, and Library Mail with a postage evidencing indicia at any Postal Service facility, preferably near the customers' local Post Office. Zone-priced pieces must have postage affixed to each mailpiece that is calculated to include the amount due as specified in 4.3.1, taking into account the weight and the zone from the ZIP Code of the office where the mailpiece is deposited to the ZIP Code of the destination address. . . .

c. Mailers must deposit all mail not specified in 4.6.3a and 4.6.3b at a postal facility within the ZIP Code shown in the indicia.

11. USPS DMM § 608.11.1 provides as follows, in pertinent part:

A postmark is a marking applied by the Postal Service to a mailpiece. If applied at a retail unit, the postmark displays the name or location of the retail unit and the date on which the mailpiece was accepted at the retail unit. If applied at a processing facility, the postmark displays the name or location of the processing facility and the date of the first automated-processing operation performed on that mailpiece. Where necessary, a postmark also cancels postage so that it cannot be reused.

12. USPS DMM § 608.11.2(a) provides as follows, in pertinent part:

a. Automated Machine-Applied Postmarks. These are applied by automated-cancellation machines located in originating processing facilities, including in Regional Processing and Distribution Centers (RPDCs) and select Local Processing Centers (LPCs). Automated machine-applied postmarks cancel postage and identify the processing facility that applied the postmark and the date of the first automated-processing operation performed on that mailpiece. Mailpieces prepared according to certain criteria will bypass automated cancellation to improve delivery speed.

13. USPS DMM § 608.11.3 provides as follows, in pertinent part:

Information conveyed by a postmark is as follows:

a. The presence of a postmark confirms that the Postal Service accepted custody of a mailpiece, and that the mailpiece was in the possession of the Postal Service on the identified date. However, for the reasons that are further described below, the postmark date does not necessarily indicate the first day that the Postal Service had possession of the mailpiece. Moreover, the absence of a postmark does not imply that the Postal Service did not accept custody of a mailpiece, because the Postal Service does not postmark all mail in the ordinary course of operations.

1 b. The name or location displayed on a postmark shows the
2 processing facility or retail unit at which the postmark was applied. The
3 date displayed on a postmark shows the date of the first automated-
4 processing operation performed on a mailpiece or, alternately, the date
5 when a mailpiece was accepted at a retail unit. Because most postmarks
6 are applied at processing facilities, they do not necessarily represent
7 either the place at which, or the date on which, the Postal Service first
8 accepted possession of the mailpiece.

9 c. The date inscribed by a postmark applied at a processing facility
10 may be later than the date that the mailpiece was first accepted by the
11 Postal Service. See 11.5. for options available to customers who seek
12 proof of the date on which the Postal Service first accepted custody of a
13 mailpiece.

14 HEARING EVIDENCE

15 14. Petitioner testified that on June 23, 2025, Jena Carpenter, Community
16 Association Manager, sent an email message to all Association members advising that
17 a special meeting was scheduled for July 3, 2025, for which the notification and
18 balloting information would be postmarked that day. Petitioner stated that the notice was
19 stamped by private meter on June 23, 2025, but was postmarked on June 24, 2025.³
20 Petitioner argued that the DMM § 604.4.6.2 stated that if mail was deposited after the
21 last collection of the day, it would be picked up the following day. Petitioner contended
22 that because the notice was stamped by private meter on June 23, 2025, but not
23 postmarked until June 24, 2025, Respondent must have missed the final mail collection
24 on June 23, 2025. Thus, the official date of mailing was June 24, 2025, therefore, was
25 not timely. Petitioner argued that under Arizona administrative practice, an item mailed
26 through the USPS is considered filed on the postmark date.⁴

27 15. Jena Carpenter, testified on behalf of Respondent that in June 2025
28 Respondent was in the process of changing management providers. During this
29 transition, Ms. Carpenter was the incoming Community Association Manager with
30 Sienna Community Management (Sienna) and she worked alongside Jose Bacerra, the
outgoing Community Association Manager with Cadden Community Management

³ See Petitioner Exhibit 3.

⁴ Petitioner referenced, generally, various appeal decisions from the “Unemployment Insurance Tax Program Appeals Board Decisions – 2016.”

1 (Cadden). On June 23, 2025, Ms. Carpenter confirmed with Cadden that the notice
2 would be mailed that day.

3 16. In closing, Petitioner argued that because Respondent missed the final
4 mail collection on June 23, 2025, the notice was mailed and postmarked the following
5 day. Therefore, it was not timely sent.

6 17. In closing, Respondent argued that the statute specifically stated the
7 notice must be “sent” at least ten days prior to the meeting. It did not state that it must
8 be postmarked ten days prior to the meeting. Section 604.4.6.2 of the DMM specified
9 that the postmeter date must be the same date the mail was deposited or it would not
10 be processed by the post office. The DMM § 4.5.1 required a correction to be made to
11 the postmeter mark if such date was earlier than the date deposited. No correction was
12 required in this case. Further, because Cadden Management and Mr. Bacerra were
13 local to Tucson, the June 24, 2025, postmark from Phoenix, could not have been the
14 mail deposit location and date.

15 **CONCLUSIONS OF LAW**

16 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
17 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned
18 community documents.”

19 2. A.R.S. § 32-2199.01 permits a member of a planned community to file a
20 petition with the Department for a hearing concerning the planned community
21 association’s alleged violations as set forth in Title 33, Chapter 16. This matter lies
22 within the Department’s jurisdiction. The statute provides that such petitions will be
23 heard before the Office of Administrative Hearings.

24 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
25 party to abide by the statute, condominium documents, community documents or
26 contract provision at issue and may levy a civil penalty on the basis of each violation.”
27 This Tribunal is not authorized to order other remediation or order civil penalties for
28 other conduct.
29
30

1 4. Petitioner bears the burden of proof to establish that Respondent violated
2 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.⁵

3 Respondent bears the burden to establish affirmative defenses by the same evidentiary
4 standard.⁶

5 5. “A preponderance of the evidence is such proof as convinces the trier of
6 fact that the contention is more probably true than not.”⁷

7 6. In Arizona, when construing statutes, we look first to a statute’s language as
8 the best and most reliable index of its meaning. If the statute’s language is clear and
9 unambiguous, we give effect to that language and apply it without using other means of
10 statutory construction, unless applying the literal language would lead to an absurd result.
11 Words should be given “their natural, obvious, and ordinary meaning.”⁸

12 7. Unless defined by the legislature, words in statutes are given their ordinary
13 meanings.⁹

14 8. Each word, phrase, clause, and sentence of a statute or rule must be given
15 meaning so that no part will be void, inert, redundant, or trivial.¹⁰

16 9. Statutes should be interpreted to provide a fair and sensible result.

17 10. A.R.S. § 33-1804(B) requires that notice of any meeting of the Association
18 members must be sent not fewer than ten days in advance of the meeting.

19 11. A.R.S. § 1-243(A) provides that the timeframe proscribed in A.R.S. § 33-
20 1804(B) is calculated by excluding the first day and including the last day.

21 12. Per USPS DMM § 608.11.1, a postmark is a marking applied by the Postal
22 Service to a mailpiece, and if applied at a processing facility, it displays the name or
23 location of the processing facility and the date of the first automated-processing
24 operation performed on that mailpiece. Where necessary, a postmark also cancels
25 postage so that it cannot be reused.

26 ⁵ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837
27 (1952).

28 ⁶ See A.A.C. R2-19-119(B)(2).

29 ⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ⁸ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

⁹ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

¹⁰ See *Deer Valley v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 13. USPS DMM § 608.11.3 further provides that, while the presence of a
2 postmark confirms that the Postal Service accepted custody of a mailpiece and that the
3 mailpiece was in the possession of the Postal Service on the identified date, the
4 postmark date does not necessarily indicate the first day that the Postal Service had
5 possession of the mailpiece. Because most postmarks are applied at processing
6 facilities, they do not necessarily represent either the place at which, or the date on
7 which, the Postal Service first accepted possession of the mailpiece. The date inscribed
8 by the postmark applied at a processing facility may be later than the date that the
9 mailpiece was first accepted by the Postal Service.

10 14. In the instant matter, the notice was stamped by private meter in Tucson
11 on June 23, 2025, and postmarked in Phoenix on June 24, 2025. The issue is whether
12 the notice was mailed in compliance with applicable statutes. A.R.S. § 33-1804(B)
13 requires only that notice be sent at least ten days prior to the meeting. It does not
14 require the notice to be postmarked. In calculating the latest date by which notice must
15 have been sent to comply with the applicable statute, it is easiest to calculate the
16 timeframe beginning from the “known” date. In this case, the known date was the
17 meeting scheduled for and held on July 3, 2025. Per A.R.S. § 1-243(A), the first day
18 must be excluded and the last day included. Thus, excluding the first day (July 3, 2025)
19 and counting back ten days, including the last (tenth) day, the result is June 23, 2025.
20 Therefore, notice must have been sent no later than June 23, 2025, to be in compliance
21 with A.R.S. § 33-1804(B).

22 15. The argument in this matter is whether the notice was considered sent on
23 the stamped date or the postmarked date. Section 608 of the USPS DMM contemplates
24 this issue. In fact, Section 608 clarifies that a postmark does not necessarily indicate the
25 first day on which the Postal Service had possession of the mailpiece. Specifically,
26 because most mail is postmarked at processing facilities, the postmark does not
27 necessarily represent either the location at which or the date on which the Postal
28 Service first accepted possession of the mailpiece; therefore, the postmark date may be
29 a later date than when the Postal Service first had possession. Additionally, the
30 undersigned Administrative Law Judge takes judicial notice that the USPS consolidated

1 the Tucson and Phoenix letter processing services in 2013, thereby ceasing to process
2 letter mail in Tucson and routing all such mail to be postmarked in Phoenix. Thus, it is
3 reasonable to conclude that a notice stamped in Tucson on June 23, 2025, and
4 postmarked in Phoenix on June 24, 2025, had to be in the possession of the Postal
5 Service no later than June 23, 2025. Therefore, the undersigned ALJ finds that the
6 notice at issue was mailed timely and in compliance with A.R.S. § 33-1804(B).

7 **ORDER**

8 **IT IS ORDERED** that Respondent be deemed the prevailing party in this matter.
9

10 **NOTICE**

11 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
12 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
13 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
14 **must be filed with the Commissioner of the Department of Real Estate**
15 **within 30 days of the service of this Order upon the parties.**

16 Done this day, March 9, 2026.

17
18 /s/ Nedra-Su Kawasaki
19 Administrative Law Judge

20 Transmitted by either mail, e-mail, or facsimile March 9, 2026 to:

21 Susan Nicolson, Commissioner
22 Arizona Department of Real Estate

23 Sean K. Moynihan, Esq
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28 By: OAH Staff
29
30