

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

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 In the Matter of:

No. 25F-H114-REL

8 Antoinette McCarthy

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 Petitioner

10
11 v.

12 Wild Turkey Townhouse Association

13 Respondent

14
15 **HEARING:** March 4, 2026

16 **APPEARANCES:** Petitioner Antoinette McCarthy appeared on her own behalf.
17 Respondent Wild Turkey Townhouse Association was represented by Charles Onofry,
18 Esq.

19 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

20 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner’s Exhibits 1-3, and
21 Respondent’s Exhibits 1-5 were admitted into evidence.

22
23 After review of the hearing record in this matter, the undersigned Administrative
24 Law Judge makes the following Findings of Fact and Conclusions of Law and issues
25 this ORDER to the Commissioner of the Arizona Department of Real Estate
26 (“Department”).

27 **FINDINGS OF FACT**

28 **BACKGROUND AND PROCEDURE**

1 1. The Department is authorized by statute to receive and to decide petitions
2 for hearings from members of homeowners' associations and from homeowners'
3 associations in Arizona.

4 2. On or about November 25, 2025, Petitioner filed a single-issue petition
5 against the Respondent with the Department. Petitioner tendered \$500.00 to the
6 Department with her petition. .

7 3. Respondent Wild Turkey Townhouse Association ("Association") timely
8 filed its Answer with the Department whereby it denied all complaint items in the petition.

9 4. Per the Notice of Hearing, the Department referred this matter to the Office
10 of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary
11 hearing on March 4, 2026, regarding the following issue based on Petitioner's petition:

12 Petitioner alleges that Article VIII, Section 4 of the Wild Turkey
13 CC&Rs "was violated as the mandatory 66% member approval was
14 not done before imposing a \$3,356,596 Special Assessment for roof
15 replacements and related optional common area alterations. The
16 following activities are included in the Special Assessment project
17 that was not approved by the 66% of members present: 1. A Special
18 Assessment in the amount of \$3,356,596 for mandatory roof
19 replacements, optional HVAC replacements, and skylight
20 construction/removal affecting common area elements on Oct 14,
21 2025. 2. Individual homeowner assessments of approximately
22 \$20,000 were issued on November 1, 2025, with payment due within
23 30 days. 3. On November 7, 2025, Chrystalyn Lash of HOAMCO
24 confirmed via email that the required 66% member ratification vote
25 was never held. 4. The Special Assessment on Oct 14, 2025
26 includes 5% annual cost escalator that is not permitted in the
27 CC&Rs."

28 **THE PARTIES AND GOVERNING DOCUMENTS**

29 5. Respondent was a homeowners' association whose members own
30 properties in a residential real estate development located in Sedona, Arizona.

 6. Petitioner was a property owner and a member of the Association.

 7. The Association is governed by its Covenants, Conditions, and
Restrictions ("CC&Rs"), and overseen by a Board of Directors ("the Board"). The

1 Association is also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised
2 Statutes ("ARIZ. REV. STAT.")

3 **HEARING EVIDENCE**

4 8. Petitioner testified that the Association violated its CC&R's by not requiring
5 a vote before entering into a contract for every townhome's roof to be replaced and
6 imposing a special assessment. In support of her position, Petitioner argued that while
7 the CC&R's authorize replacements, it does not authorize upgrades or additions without
8 a vote by the Association members. Petitioner pointed to several examples in the
9 Roofing Assessment where there are additions as part of the project. These included
10 additional insulation, a ventilation system, and alterations to skylights in specific units.¹
11 Petitioner also offered the testimony of two witnesses, Rose Vangrieken and Fred
12 Grove.

13 9. Ms. Vangrieken testified that she was not in favor of the project and even
14 wanted to join the committee, but it was cancelled before she could attend a meeting.
15 She testified that she had to take out a personal loan to obtain the funds necessary for
16 the Assessment.

17 10. Mr. Grove had been a member of the Board for 8 years and testified that
18 he believed that the maintenance of the roof fell solely on the Association.

19 11. The Association offered the testimony of Chrystalyn Lash and Daniel
20 Meyers. Ms. Lash was the Community Manager for the Association. She testified that
21 there were no common areas in which the roof was being replaced, rather it was all the
22 individual townhomes. Ms. Lash testified that because of this, it was each member's
23 responsibility to pay for their individual roofs, and that no vote was needed by the entire
24 membership of the Association. Ms. Lash testified that ultimately it was determined that
25 the Association would pay 35% and each individual townhome owner would be
26 responsible for 65% of the cost.

27 12. Mr. Meyers was the Association's Finance Chair and explained how the
28 costs were to be determined. He explained that the project would be done in several
29 phases and due to the unstable costs for materials and labor, there was a 5 percent

30 ¹ See Petitioner's Exhibit 1.

1 escalator clause also added. Too, Mr. Meyers testified that because each roof was
2 unique, (in size and whether there were skylights), the amount was estimated, and the
3 Association would reevaluate each townhome's individual cost when the project was
4 completed.

5 **CONCLUSIONS OF LAW**

6 1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV.
7 STAT. §§ 32-2102 and 32-2199 et al., regarding a dispute between an owner and a
8 planned community association, the owner or association may petition the department
9 for a hearing concerning violations of community documents or violations of the statutes
10 that regulate planned communities as long as the petitioner has filed a petition with the
11 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

12 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02,
13 and 41-1092, OAH has the authority to hear and decide the contested case at bar.

14 3. In this proceeding, Petitioner bears the burden of proving by a
15 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1803.²

16 4. "A preponderance of the evidence is such proof as convinces the trier of
17 fact that the contention is more probably true than not."³ A preponderance of the evidence
18 is "[t]he greater weight of the evidence, not necessarily established by the greater number
19 of witnesses testifying to a fact but by evidence that has the most convincing force;
20 superior evidentiary weight that, though not sufficient to free the mind wholly from all
21 reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the
22 issue rather than the other."⁴

23 5. The CC&R's Article VI, states in relevant part, as follows:

24 **EXTERIOR MAINTENANCE**

25 The Association, or its duly delegated representative, shall maintain
26 and otherwise manage the Common Areas, including, but not limited
27 to, the landscaping, parking areas, streets and recreational facilities
28 located thereon, together with all other real and personal property
29 owned by the Association. In addition, the Association shall provide
30 exterior maintenance, up to exterior buildings lines and patio or rear

² See ARIZ. ADMIN. CODE R2-19-119.

³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁴ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

1 Lot enclosures, on the Lots as follows: paint, repair, replace and care
2 for roofs, gutters, downspouts, exterior building surfaces, trees,
3 shrubs, grass, walks and other exterior improvements. Such exterior
4 maintenance shall not extend to glass surfaces and exterior door and
5 window fixtures and other hardware. The Association shall also have
6 the right, but not the obligation, to undertake additional maintenance
7 within the Project as the Board may from time to time determine to be
8 in the best interest of the Association and the Owners, and shall also
9 maintain and otherwise manage and be responsible for the rubbish
10 removal in all areas within the properties. The Board shall use a
11 reasonably high standard of care in providing such maintenance,
12 management and repair, so that the Project will reflect a high pride of
13 ownership. Maintenance and repair of the individual townhouse units
14 shall be the sole obligation and expense of the individual Owners,
15 except to the extent that exterior maintenance and repair is provided
16 by the Association pursuant to this Article.

17 ...

18 6. The Association CC&R's Article VIII, Section 4 state as follows:

19 Section 4. Special Assessments. Special Assessments shall be
20 levied by the Board against Lots with respect to which particular
21 costs have been incurred by the Association. In the event the
22 Association undertakes to provide materials or services which
23 benefit individual Lots and which can be accepted or not by Individual
24 Owners, such Owners in accepting such materials or services shall
25 be deemed to have agreed in writing that statements thereof from the
26 Association shall be Special Assessments. In addition to any other
27 assessment authorized by this Declaration, the Board shall also have
28 the right and power to provide for the construction of additional
29 recreational and other common facilities, or the alteration, demolition
30 or removal of existing recreational and other common facilities and to
provide for the payment thereof by special assessment. Any such
alteration, demolition, removal, construction or improvements shall
first be authorized by an affirmative vote of three-fourths (3/4) of the
Board at a duly called meeting at which a quorum is present and
ratified and approved by the affirmative vote of sixty-six percent
(66%) of the Members present at a duly called meeting at which a
quorum is present.

7. Based upon the foregoing, Petitioner met her burden of proof in
demonstrating that the Association was in violation of the CC&R's as it was clear that
not only were the roofs to be replaced, they were adding upgrades to the same, such as

1 the ventilation and additional insulation. While the tribunal does not believe that the
2 word replace must mean "like-for-like" as Petitioner claimed, it should certainly be close
3 enough to the same without costly additions/upgrades. Further, the tribunal appreciates
4 the effort Mr. Meyers and his committee put forth to try to fairly distribute the costs
5 amongst all homeowners but given the uniqueness of each roof it would be almost
6 impossible to truly determine an accurate cost per townhome until the project was
7 completed. However, because of the complicated nature of the project and the
8 calculations required, the matter should have been brought to a vote by the members of
9 the of the Association.

10 **ORDER**

11 **IT IS ORDERED** that Petitioners' petition is granted and the Association must
12 follow the CC&R.s

13 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
14 Respondent shall reimburse Petitioner's filing fee as required by ARIZ. REV. STAT. § 32-
15 2199.01.

16 **IT IS FURTHER ORDERED** that no civil penalty be awarded.

17 **NOTICE**

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

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24 Done this day, March 19, 2026.

25 /s/ Adam D. Stone
26 Administrative Law Judge
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Transmitted by either mail, e-mail, or facsimile March 19, 2026 to:

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