

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Nathaniel Smith

**No. 25F-H119-REL**

3 Petitioner,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

4 v.

5 Anthem Country Club Community  
6 Association

7 Respondent.  
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9 **HEARING:** April 13, 2026

10 **APPEARANCES:** Nathaniel Smith appeared on behalf of himself. Josh Bolen  
11 Esq. appeared on behalf of Anthem Country Club Community Association.

12 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

13 **EXHIBITS ADMITTED INTO EVIDENCE:** Exhibits A, C, D, G, and I submitted by  
14 Nathaniel Smith. Exhibits 6 and 8 submitted by Anthem Country Club Community  
15 Association.  
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17 **FINDINGS OF FACT**

18 1. The Arizona Department of Real Estate (Department) is authorized by  
19 statute to receive and to decide Petitions for Hearings from members of homeowners'  
20 associations in Arizona.

21 2. Anthem Country Club Community Association (ACCCA) is a homeowners'  
22 association whose members own lots in the Anthem Country Club Community in  
23 Anthem, Arizona.

24 3. Nathaniel Smith owns a lot in and is a member of the ACCCA.

25 4. On or about October 31, 2025, the Association notified Mr. Smith in writing  
26 that he had met the requirements for the deactivation of his transponder(s) pursuant to  
27 ACCCA's Policy. ACCCA further notified Mr. Smith that he needed to bring his account  
28 current, ensuring that any unpaid balances were below the \$400 threshold, and cure  
29 any compliance with ACCCA's Covenants, Codes, and Restrictions (CC&Rs) within ten  
30 days from the date of the notice, and that if he failed to meet these requirements, his

1 transponder would be deactivated and he would be required to pay a \$25 reactivation  
2 fee.

3 5. Mr. Smith failed to pay the unpaid balance.

4 6. The ACCCA deactivated Mr. Smith's transponder.

5 7. The Anthem Country Club property has four entrances and four entry  
6 gates. Two of the gates are for both residents and visitors, (hereinafter "main gates")  
7 and two of the gates are for residents only (hereinafter "resident gates"). The resident  
8 gates are activated by remote control or "transponder". A resident who enters through a  
9 main gate may require waiting in line for entry into the Anthem Country Club if the  
10 resident does not have a transponder. Mr. Smith explained at hearing that he is required  
11 to travel approximately 8 more minutes to access the one of the main gates that does  
12 not require a transponder.

13 8. On or about December 2025, Mr. Smith filed a petition with the  
14 Department that provided as follows, "On multiple occasions including the most recent  
15 in December 2, 2025, the Association unlawfully obstructed my easement of ingress  
16 and egress, in violation of CC&R §§ 10.11, 11.1, 11.1(d)(ii), 3.3(d), and 3.4(a), A.R.S.  
17 §§ 33-1803 and 33-1807, and the holdings of Kalway and Tierra Ranchos, by arbitrarily  
18 deactivating my transponder at varying account balances and imposing an undisclosed,  
19 unauthorized \$25 reactivation fine that the governing documents and Arizona law do not  
20 permit."

21 9. Mr. Smith paid a filing fee of \$500.00 for the petition.

22 10. On January 20, 2026, ACCCA filed a Motion to Dismiss alleging that  
23 Mr. Smith alleged three violations in his petition, but failed to pay the required filing fee  
24 of \$1,500.00 for the petition. The ACCCA also contended that the Office of  
25 Administrative Hearings lacked jurisdiction to hear the petition.

26 11. On January 20, 2026, Mr. Smith filed an objection contending that he was  
27 alleging only one violation.

28 12. On January 29, 2026, the Administrative Law Judge (ALJ) issued an  
29 Order denying the Motion to Dismiss for lack of jurisdiction. However, the ALJ  
30 found that Mr. Smith's petition included the following three issues:

1) Allegations that The Association violated the Association’s Declaration of Covenants, Conditions, and Restrictions, specifically Article X, Section 10.11, Article XI, Section 11.1, Article XI, Section 11.1(d)(ii), Article III, Section 3.3(d), and Article III, Section 3.4(a), when it deactivated Mr. Smith’s transponder and charged a \$25 reactivation fee.

2) An allegation that The Association violated ARIZ. REV. STAT. § 33-1803 “Assessment limitation; penalties; notice to member of violation”, when it deactivated his transponder and charged him a \$25 reactivation fee.

3) An allegation that The Association violated ARIZ. REV. STAT. §33-1807, “Common expense liens; priority; mechanics' and materialmen's liens; notice.”, when it deactivated Mr. Smith’s transponder and charged at \$25 reactivation fee.

13. The ALJ ordered Mr. Smith to choose which issue he desired to proceed with at hearing, or pay the \$1,500.00 filing fee to hear all three issues.

14. On January 29, 2026, Mr. Smith notified the tribunal that he elected to proceed with issue #1, allegations that the ACCCA violated its Covenants, Conditions, and Restrictions, specifically Article X, Section 10.11, Article XI, Section 11.1, Article XI, Section 11.1(d)(ii), Article III, Section 3.3(d), and Article III, Section 3.4(a), when it deactivated Mr. Smith’s transponder and charged a \$25 reactivation fee.

15. A hearing was held on April 13, 2026.

16. At hearing, Mr. Smith testified on behalf of himself. ACCCA presented the testimony of its former Community Manager, Meghan Hill.<sup>1</sup>

**RELEVANT CC&Rs**

17. ACCCA’s CC&Rs provide, in relevant part, as follows:

.....  
**Part Two: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, and architecture within the Anthem Country Club Community are what give the community its identity and make it a place that people want to call "home." Each Owner and resident*

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<sup>1</sup>

upholding such standards can take pride in the results of that common effect. This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as Anthem and the Anthem Country Club Community change and grow.

**Article III. Use and Conduct**

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**3.3 Rule Making Authority.**

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d. No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

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**3.4 Protection of Owners and Others**

Except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C", all Association actions must comply with the following:

a. Similar Treatment. Similarly situated Owners shall be treated similarly; provided, the Use Restrictions and rules may vary by Benefited Area.

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**10.11 Equal Treatment**

So long as Declarant owns any property described in Exhibits "A" or "B", neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

a. limits the access of Declarant, its successors, assigns, and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

b. limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

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1 c. limits or prevents purchasers of new residential housing constructed by  
2 Declarant, its successors, assigns, and/or affiliates in the Anthem Country' Club  
3 Community from becoming members of the Association or enjoying full use of its  
4 Common Areas, subject to the membership provisions of this Declaration and the  
By-Laws;

5 d. discriminates against or singles out any group of Members or prospective  
6 Members or Declarant [this provision shall expressly prohibit the establishment of  
7 a fee structure (*i.e.*), assessments, Special Assessments and other mandatory  
8 fees or charges other than Benefited Assessments, chartered club dues, and use  
9 fees) that discriminates against or singles out any group of Members or  
Declarant, but shall not prohibit the establishment of Benefited Assessments];

10 e. impacts the ability of Declarant, its successors, assigns, and/or affiliates, to  
11 carry out to completion its development plans and related construction activities  
12 for the Anthem Country Club Community, as such plans are expressed in the  
13 Master Plans, as such may be amended and updated from time to time. Policies,  
14 rules, or procedures affecting the provisions of existing easements established  
15 by Declarant and limiting the establishment by Declarant of easements  
16 necessary to complete the Anthem Country Club Community shall be expressly  
included in this provision. Easements that may be established by Declarant shall  
include but shall not be limited to easements for development, construction, and  
landscaping activities and utilities; or

17 f. impacts the ability of Declarant, its successors, assigns, and/or affiliates to  
18 develop and conduct customer service programs and activities in a customary  
19 and reasonable manner.

20 Neither the Association nor any other entity shall exercise its authority over the  
21 Common Areas (including, but not limited to, any gated entrances and other  
22 means of access to the Properties or the Exhibit "B" property) to interfere with the  
23 rights of Declarant set forth in this Declaration or to impede access to any portion  
of the Properties or the Exhibit "B" property over the streets and other Common  
Areas within the Properties.

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25 **Part Five: PROPERTY RIGHTS WITHIN THE COMMUNITY**

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27 *The nature of living in a planned community, with its wide array of properties and*  
28 *development types and its ongoing development activity, requires the creation of*  
29 *special property rights and provisions to address the needs and responsibilities*

1 *of the Owners, Declarant, the Association, and others within or adjacent to the*  
2 *community.*

3 **Article XI. Easements**

4 **11.1 Easements in Common Area**

5 Declarant grants to each Owner a non-exclusive right and easement of use,  
6 access, and enjoyment in and to the Common Area, subject to:

7 a. the Governing Documents and any other applicable covenants (including, but  
8 not limited to, that certain Deed of Conservation Easement Between Anthem  
9 Arizona, L.L.C. and Del E. Webb Land Conservancy, Recorded on February 16,  
10 1996 as Document Number 96-0105850, as it may be amended);

11 b. any restrictions or limitations contained in any deed conveying such property  
12 to the Association;

13 c. the authority and rights of the Council as set forth in this Declaration and the  
14 Community Covenant;

15 d. the Board's right to:

16 i. adopt rules regulating the use and enjoyment of the Common Area, including  
17 rules limiting the number of guests who may use the Common Area;

18 ii. suspend the right of an Owner to use facilities within the Common Area:

19 A. for any period during which any charge against such Owner's Lot remains  
20 delinquent; and

21 B. for a period not to exceed 30 days for a single violation or for a longer period  
22 in the case of any continuing violation, of the Governing Documents after notice  
23 and a hearing pursuant to the By-Laws;

24 iii. dedicate or transfer all or any part of the Common Area, subject to such  
25 approval requirements as may be set forth in this Declaration;

26 iv. rent or lease any portion of any clubhouse or other recreational facilities within  
27 the Common Area on a short-term basis to any Person approved by the Board  
28 for such Person's exclusive use;

1 v. permit use by Persons other than Owners, their families, lessees, and guests  
2 upon payment of admission charges, membership fees, of other use fees  
3 established by the Board;

4 vi. mortgage, pledge, or hypothecate any or all of its real or personal property as  
5 security for money borrowed or debts incurred; and

6 vii. create, enter into agreements with, and grant easements to tax-exempt  
7 organizations under Section 7.11;

8 e. the rights of certain Owners to the exclusive use of those portions of the  
9 Common Area designated "Limited Common Areas," as described in a Tract  
10 Declaration;

11 f. the Association's right to require Members, Owners, and/or their guests to  
12 present activity or use privilege cards, as may be issued by the Association, for  
13 access and use of amenities or facilities within the Properties; and

14 g. the use of the entry facilities, including manned entry gates, and private streets  
15 within the Properties by Declarant, its affiliates, and their designees, and the  
16 owner, members, and other permitted users of the Country Club Amenity  
17 currently known as Anthem Country Club.

18 The initial Common Area shall be conveyed to the Association prior to or  
19 concurrent with the conveyance of the first Lot to a Class "A" Member other than  
20 a Builder.

21 Any Owner may extend his or her right of use and enjoyment to the members of  
22 his or her family, lessees, social invitees, and occupants of his or her Lot, as  
23 applicable, subject to reasonable regulation by the Board. An Owner who leases  
24 his or her Lot in its entirety shall be deemed to have assigned all such rights to  
25 the lessee of such Lot for the period of the lease.

26 .....

27 18. At hearing, the counsel for the ACCA contended that Mr. Smith is  
28 barred by the Petitioner is barred under the "six-year breach of contract statute of  
29 limitations" or the "four-year fallback statute of limitations" from filing a petition with the  
30 Department that challenges a policy adopted by the ACCCA approximately 12 years  
ago.

**CONCLUSIONS OF LAW**

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2 1. A.R.S. § 32-2199(B) permits an owner or a planned community  
3 organization to file a petition with the Department for a hearing concerning violations of  
4 planned community documents under the authority Title 33, Chapter 16.<sup>2</sup> Such petitions  
5 will be heard before the Office of Administrative Hearings, an independent state agency.

6 2. Petitioners bear the burden of proof to establish that Respondent violated §  
7 3.11(D)(1) of the Common Project Guidelines by a preponderance of the evidence.<sup>3</sup>  
8 Respondent bears the burden to establish affirmative defenses by the same evidentiary  
9 standard.<sup>4</sup>

10 3. “A preponderance of the evidence is such proof as convinces the trier of fact  
11 that the contention is more probably true than not.”<sup>5</sup> A preponderance of the evidence is  
12 “[t]he greater weight of the evidence, not necessarily established by the greater number of  
13 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
14 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
15 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather  
16 than the other.”<sup>6</sup>

17 4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give  
18 effect to the intent of the parties.<sup>7</sup> “Restrictive covenants must be construed as a whole  
19 and interpreted in view of their underlying purposes, giving effect to all provisions  
20 contained therein.”<sup>8</sup>

21 5. The ALJ concludes that Mr. Smith was not barred by a “six-year breach of  
22 contract statute of limitations” or the “four-year fallback statute of limitations” from filing  
23 the petition in this matter. To the extent that the ACCCA contends that the petition is  
24 barred under A.R.S. 12-550 or A.R.S. 12-548, those statutes do not apply to

25 <sup>2</sup> See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce  
the development’s CC&Rs.

26 <sup>3</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74  
Ariz. 369, 372, 249 P.2d 837 (1952).

27 <sup>4</sup> See A.A.C. R2-19-119(B)(2).

28 <sup>5</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 <sup>6</sup> BLACK’S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

30 <sup>7</sup> See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

<sup>8</sup> *Lookout Mountain Paradise Hills Homeowners’ Ass’n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App.  
1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 administrative proceedings at the Office of Administrative Hearings, but rather, to courts  
2 and civil proceedings. This initial hearing is government by A.R.S. Title 41, Chapter 6,  
3 Article 10 (Uniform Administrative Procedure Act).

4 6. Upon consideration of the evidence presented at hearing, the ALJ  
5 concludes that Mr. Smith has failed to establish by a preponderance of the evidence  
6 that the ACCCA violated Article X, Section 10.11, Article XI, Section 11.1, and Article XI,  
7 Section 11.1(d)(ii), when it deactivated Mr. Smith's transponder and charged a \$25  
8 reactivation fee. The weight of the evidence presented at hearing shows that Mr. Smith  
9 was not prevented from accessing his home or the common areas through the two main  
10 gates that were available 24 hours a day and 7 days a week. Entry through the main  
11 gates does not require the use of a transponder. Although it may have been  
12 inconvenient for Mr. Smith to access his property using a main gate, the ACCCA has  
13 not limited or blocked Mr. Smith's access to his home or the Common Areas by  
14 deactivating his transponder. Mr. Smith offered no probative evidence that he was  
15 unable to access his property through the main gates due to the deactivation of his  
16 transponder.

17 7. There was no evidence that the ACCCA amended the Use Restrictions  
18 contemplated in Section 3.3(d). In addition, the record does not show that the ACCCA  
19 failed to deactivate transponders held by other residents who had an outstanding  
20 balance with the ACCCA. Therefore, Mr. Smith has failed to establish that the ACCCA  
21 violated Article III, Section 3.3(d), and Article III, Section 3.4(a) of its CC&Rs

22 8. The ALJ concludes that Mr. Smith failed to establish by a  
23 preponderance of the evidence that the ACCCA violated Article X, Section 10.11, Article  
24 XI, Section 11.1, Article XI, Section 11.1(d)(ii), Article III, Section 3.3(d), and Article III,  
25 Section 3.4(a) of its CC&Rs, when it deactivated Mr. Smith's transponder and charged a  
26 \$25 reactivation fee.

27 9. Accordingly, the petition must be dismissed.

28 **ORDER**

29 **IT IS ORDERED** that Nathaniel Smith's petition against Anthem Country Club  
30 Community Association is dismissed.

NOTICE

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

Done this day, May 4, 2026.

/s/ Velva Moses-Thompson  
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile May 4, 2026 to:

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