

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of

No. 25F-H090-REL

Rainey, Chad D. / HN&CR Living Trust
dated August 13, 2019,
Petitioner,

ADMINISTRATIVE LAW JUDGE
DECISION

v.
The Garden Lakes Community Association,
Respondent.

HEARING: An April 10, 2026, pre-hearing discussion, followed by written hearing memoranda filed on April 24, 2026.

APPEARANCES: Chad D. Rainey appeared on his own behalf. Lauren Elliott Stine, Esq. represented The Garden Lakes Community Association.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

EXHIBITS ADMITTED INTO EVIDENCE: Department of Real Estate Notice of Hearing Packet (Packet). Petitioner Exhibits A and B.¹ Hearing Memoranda.

FINDINGS OF FACT

1. Pursuant to Arizona Revised Statutes (Ariz. Rev. Stat.) § 33-1801 et seq., the Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of planned community associations in Arizona.

2. Chad D. Rainey, HN&CR Living Trust dated August 13, 2019 (Petitioner) is a homeowner within The Garden Lakes Community Association (Garden).

3. On or about October 15, 2025, Petitioner filed a single-issue petition with the Department which stated that the Association has imposed a \$500.00 “Unapproved Modification Penalty” without providing a reasonable opportunity to cure. Petitioner alleges this is violation of Arizona Revised Statutes (Ariz. Rev. Stat.) § 33-1803(B). Petitioner further states that this \$500.00 penalty is “redundant, excessive and inconsistent” with the established Enforcement and Fine Policy which already outlines

¹ Two exhibits submitted on December 26, 2025, were admitted; the audio exhibit was not admitted.

1 specific penalties for unapproved modifications; Petitioner indicates that other fines are
2 \$50.00, \$75.00, and \$100.00, and the \$500.00 policy was every 6 months for eternity.
3 Petitioner further stated that such a notice *fails* to explain how the penalty could be
4 cured within 14 days because the architectural committee only meets every 30 days.
5 Finally, Petitioner noted that there was no way to “un-start” a modification to cure the
6 disapproval if the architectural committee does not approve the modification.

7 4. Among other documents filed with the Petition, Petitioner included: a copy
8 of “The Garden Lakes Community Association Deed Restriction Enforcement and Fine
9 Policy” (Policy); a copy of “Garden Lakes Community Association Architectural
10 Guidelines;” and, a copy of Minutes from a July 21, 2021 Board Meeting Minutes at
11 which an updated Policy was adopted to be effective November 1, 2022, and the
12 \$500.00 penalty was implemented for any unapproved modification.

13 5. Petitioner did not include with his Petition a copy of any notice of violation
14 of unapproved modification and/or imposition of a \$500.00 penalty which he had
15 received from Garden.

16 6. On November 14, 2025, Garden returned its Answer to the Department
17 whereby it simply denied Petitioner’s claim.²

18 7. On or about November 21, 2025, the Department referred this matter to
19 the Office of Administrative Hearings (Tribunal), an independent state agency, for an
20 evidentiary hearing to determine whether the alleged violation of Ariz. Rev. Stat. § 33-
21 1805(A) had occurred.

22 8. On December 26, 2025, Petitioner filed to the Tribunal two documents: a
23 copy of the “Community Association Management Agreement between Garden Lakes
24 Community Association and Capital Consultants Management Corporation;” and a copy
25 of a May 1, 2025 letter from counsel for Garden, which letter responded to Petitioner’s
26 emails (dated April 16, 2025 and April 18, 2025) regarding various requests from
27 Petitioner for records and documents.

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29

 ² See Packet.

1 9. Following continuances, the hearing convened on April 10, 2026.
2 Discussion at the hearing session turned into a pre-hearing conference, with the
3 Tribunal indicating that Petitioner had not provided a document demonstrating that the
4 complained-of policy has been imposed on Petitioner and, thus, calling into question
5 whether the Petition was appropriate for consideration at the Tribunal.

6 10. Garden moved to dismiss the Petition, given that Garden has not issued
7 any such notice or imposed any such penalty on Petitioner.

8
9 11. The Policy sets forth a process for residents to obtain the approval of the
10 community's Architectural Committee for making changes to the exterior of a home and
11 further sets forth a schedule of fines that a resident may be subject to in the event the
12 resident fails to comply with the policy.

13 12. Pursuant to Section 4 in Garden's Declaration of Covenants Conditions,
14 Restrictions and Easements for Garden Lakes (CC&R), the Lots of all residents are
15 subject to some restrictions.³ Section 4.2(a) sets forth the restrictions regarding
16 proposed improvements, alterations and repairs to the Lots.

17 Except as otherwise expressly provided in this Declaration, the
18 Architectural Review Committee Guidelines or any applicable Recorded
19 Tract Declaration, (i) no improvements, alterations, repairs, excavation,
20 grading, landscaping (except landscaping on a Lot designated for Single
21 Family or Cluster Residential Use) or other work which in any way alters
22 the exterior appearance of any property or improvements thereon from
23 their natural or improved state existing on the date a Tract Declaration for
24 such property was first Recorded shall be made or done, and (ii) no
25 building, fence, exterior wall, residence, or other structure or grading shall
26 be commenced, erected, maintained, altered, changed or made on any
27 Lot or Parcel at any time, unless and until the Architectural Review
28 Committee has, in each such case, reviewed and approved the nature of
29 the proposed work, alteration, structure or grading and the plans and
30 specifications therefor. No substantial changes or deviations in or from the
plans and specifications, once approved by the Architectural Review
Committee, shall be permitted.

3 Packet.

1 13. The Policy sets forth the types of violations for which the Board may
2 impose penalties. One such violation would be as follows:

3 Architectural - Improvements of any kind or nature erected, placed or
4 altered on any Lot, which are visible from neighboring property and have
5 not been first approved by the Architectural Committee pursuant to Article
6 XI and Article IV, Section 4.2 of the Declaration .

7 14. The Policy sets forth a 4-step notification process by which the Board
8 would notify residents of any violations:

9 a. First Notice of Violation - A notice will be delivered to the Owner of the
10 property outlining the violation. In the event that the Owner of the property
11 can be identified as an absentee Owner, a copy of the violation letter will
12 also be sent to the tenant at the property address. The Owner will be
13 given fourteen (14) calendar days to bring the violation into compliance.
14 The Notice will inform the Owner that a monetary penalty, not exceeding
15 the Initial Monetary Penalty (as established on the Monetary Penalty
16 Schedule), will be imposed for the violation if the violation has not been
17 corrected after fourteen (14) calendar days from the date of the Notice.

18 b. Second Notice of Violation and Assessment of Initial Monetary Penalty -
19 The Association will assess an Initial Monetary Penalty according to the
20 Monetary Penalty Schedule if the Owner: (1) fails to correct the violation
21 within fourteen (14) calendar days; (2) the violation has repeated or
22 returned within six (6) months of the date the First Notice of Violation. All
23 penalty notices may be sent via regular and certified mail. The homeowner
24 shall be responsible for a certified fee added to the penalty.

25 15. The Policy sets forth a Monetary Penalty Schedule as follows: (a) a
26 \$50.00 penalty after the second notice; (b) an additional \$75.00 penalty after the third
27 notice; an additional \$100.00 penalty after the fourth and any successive notice and a
28 (d) \$500 penalty for any unapproved architectural modification on the first and any
29 successive notices. The Policy allows residents to seek a hearing before the Board of
30 Directors before any penalty is assessed as follows:

 Opportunity to be Heard - The Association recognizes each Owner's right
to explain the reasons why there is a violation of the Declaration or the
other Project Documents, particularly if the violation results in a monetary
penalty. *Before any penalty is assessed, an Owner has the opportunity to*

1 request a hearing before the Board of Directors. The Owner must request
2 a hearing, in writing, within (30) thirty days of receipt of the notice of
3 violation. If the hearing is scheduled, the Owner is bound by the decision
4 of a majority of the Board.⁴

4 16. Petitioner’s Petition alleges that the \$500.00 penalty is a violation of Ariz.
5 Rev. Stat. § 33-1803(B), which provides, in pertinent part:

6 After notice and an opportunity to be heard, the board of directors may
7 impose reasonable monetary penalties on members for violations of the
8 declaration, bylaws and rules of the association. Notwithstanding any
9 provision in the community documents, the board of directors shall not
10 impose a charge for a late payment of a penalty that exceeds the greater
11 of fifteen dollars or ten percent of the amount of the unpaid penalty. A
12 payment is deemed late if it is unpaid fifteen or more days after its due
13 date, unless the declaration, bylaws or rules of the association provide for
14 a longer period.

13 17. In his memorandum, Petitioner argued that this matter is a “current
14 dispute” arising from a completed Board action, *i.e.*, the adoption/amendment of the
15 Policy, which Board action presently determines Petitioner’s rights, duties, and
16 privileges as a homeowner. Petitioner argued that Garden has initiated enforcement
17 action, governed by the Policy, against him in its October 25, 2025 violation notice,
18 which he attached to his memorandum. Petitioner argued that the October 25, 2025
19 notice “placed me in jeopardy of a \$500 fine under the applicable enforcement scheme.”

20 18. The October 25, 2025 notice was issued by Garden regarding weed(s) on
21 Petitioner’s property. The notice informs Petitioner regarding “**Rear yard on dock.**
22 **Please remove weeds from landscaping**” and further indicates:

23 We understand that this matter may have been simply overlooked and/or
24 the inspector may have observed a very temporary situation. If the
25 situation has not been corrected we request that you make arrangements
26 to remedy the violation within 14 days of the date of this letter.

27 Failure to comply or to provide a reasonable corrective action plan could
28 result in the imposition of fines and/or other remedies. In accordance

29 ⁴ Emphasis added here.

1 with Arizona State Law and the Association`s CC&R`s, you have the right
2 to appeal this violation and attend a hearing at which you may speak
3 prior to any fines being levied on your account. The hearing request must
4 be in writing to the Association within 14 days of the date of this Courtesy
5 Notice. The Association will then provide notice of the date, time, and
6 place the hearing is scheduled to occur. Failure of the homeowner to
7 request a hearing within the prescribed time limit shall constitute a waiver
8 of the opportunity for such hearing and will allow the Association to
9 impose fines, other remedies, and/or engage in corrective action. Fines
10 imposed, if any, will be enforced per the Association's collection policy.

11 19. In its memorandum, Garden argued that the matter is not a “dispute”
12 which can be considered or determined in this Tribunal under the applicable statutes.
13 Ultimately, Garden requested that the Tribunal dismiss Petitioner’s Petition.

14 20. The hearing record does not contain any notice from Garden regarding
15 unapproved modifications, or any notice regarding a \$500.00 penalty, as had been
16 stated in Petitioner’s Petition.

17 **Conclusions of Law**

18 1. This matter lies within the Department’s jurisdiction pursuant to Ariz. Rev. Stat.
19 §§ 32-2102 and 32-2199 *et seq.*, regarding a dispute between an owner and a planned
20 community association. An owner or an association may petition the Department for a
21 hearing concerning alleged violations of community documents or alleged violations of
22 the statutes which regulate planned communities as long as the petitioner has filed a
23 petition with the Department and paid a filing fee as outlined in Ariz. Rev. Stat. § 32-
24 2199.01.

25 2. Pursuant to Ariz. Rev. Stat. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-
26 2199.02, and 41-1092 *et seq.* the Tribunal has the authority to hear and decide
27 contested cases. Ariz. Rev. Stat. § 41-1001 defines: "Contested case" as “any
28 proceeding, including rate making ... in which the legal rights, duties or privileges of a
29 party are required or permitted by law, other than this chapter, to be determined by an
30 agency after an opportunity for an administrative hearing.”

1 3. Ariz. Rev. Stat § 32-2199.02 authorizes the administrative law judge to “order
2 any party to abide by the statute, condominium documents, community documents or
3 contract provision at issue and may levy a civil penalty on the basis of each violation.”

4 4. In this proceeding, Petitioner bears the burden of proving by a preponderance of
5 the evidence that Respondent violated Ariz. Rev. Stat. § 33-1803(B) as alleged in his
6 Petition.⁵ Respondent bears the burden to establish affirmative defenses by the same
7 evidentiary standard.⁶

8 5. “A preponderance of the evidence is such proof as convinces the trier of fact that
9 the contention is more probably true than not.”⁷ A preponderance of the evidence is
10 “[t]he greater weight of the evidence, not necessarily established by the greater number
11 of witnesses testifying to a fact but by evidence that has the most convincing force;
12 superior evidentiary weight that, though not sufficient to free the mind wholly from all
13 reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the
14 issue rather than the other.”⁸

15 6. Based on the hearing record, the Administrative Law Judge concludes that
16 Garden has not imposed a \$500.00 unapproved modification penalty on Petitioner as
17 was alleged in his Petition. Therefore, technically, the hearing record does not
18 demonstrate the existence of a current “dispute” between Garden and Petitioner on the
19 alleged grounds.

20 7. In consideration of the submitted October 25, 2025 notice from Garden to
21 Petitioner regarding the need to remove weeds from the dock on Petitioner’s property,
22 the Administrative Law Judge concludes that such notice did not demonstrate either
23 notice of an unapproved modification or any imposed penalty, let alone a \$500.00
24 penalty.

25 8. The Administrative Law Judge concludes that Petitioner has failed to
26 demonstrate a current dispute of the nature as was alleged in his Petition and, further,

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28 ⁵ See ARIZ. ADMIN. CODE R2-19-119.

⁶ See ARIZ. ADMIN. CODE R2-19-119(B)(2).

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

⁸ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 failed to sustain his burden of proof that Garden violated Ariz. Rev. Stat. § 33-1803(B)
2 as alleged in his Petition and, therefore, Petitioner's Petition must be dismissed.

3 **ORDER**

4 **IT IS ORDERED** that Petitioner's petition in 25F-H090-REL be dismissed.

5 **IT IS FURTHER ORDERED** that Petitioner bears the \$500.00 filing fee.

6 **NOTICE**

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

12 Done this day, May 18, 2026.

13 /s/ Kay A. Abramsohn
14 Administrative Law Judge

15
16 Transmitted by either mail, e-mail, or facsimile May 18, 2026 to:

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18 Arizona Department of Real Estate
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By: OAH Staff