

Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of
Vanderbilt Farms Marana Homeowners
Association,
Petitioner,
v.
Arthur Eckhart and Beckie Hansen Eckhart,
Respondents.

No. 25F-H127-REL

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: April 27, 2026

APPEARANCES: Arthur Eckhart and Beckie Hansen Eckhart appeared on their own behalf. Attorney Tessa Knueppel represented Vanderbilt Farms Marana Homeowners Association.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

EXHIBITS ADMITTED INTO EVIDENCE: Notice of Hearing Packet (Packet). Respondent Exhibits A through C.

FINDINGS OF FACT

1. The Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona. Homeowners' associations, and their members are governed by Chapter 16 of Title 33, the Planned Communities Act, Arizona Revised Statutes (Ariz. Rev. Stat.) §§ 33-1801 to 33-1818.

2. Vanderbilt Farms Marana Homeowners Association (Vanderbilt) is a homeowners' association whose members own single-family residences in the Vanderbilt property in Marana, Arizona.

3. Arthur Eckhart and Beckie Hansen Eckhart (Respondents) are members of Vanderbilt.

4. On May 28, 2025, Vanderbilt issued an architectural violation notice regarding a corrugated steel fence having been erected in between the common walls

1 of Respondents and the neighbor.¹ The Courtesy Notice provided in relevant part, as
2 follows:

3 **It has been reported that a large 8 foot high corrugated steel fence is**
4 **permanently erected in between the common walls. No ARC requests were**
5 **found for the fencing in complaint and is in violation of CC&Rs for**
6 **Vanderbilt.**

7 Please bring this issue into compliance within **14** days from the date of this
8 inspection. If you wish to contest this notice, the process you must follow
9 is to file an appeal with the Board of Directors. Please visit
10 <https://www.homeownerresources.com/Appeals> to file your appeal.
11 Requests for an appeal must be received within **21** days of receipt of this
12 notice. ...

13 5. On October 24, 2025, Vanderbilt issued an architectural violation notice
14 regarding the metal fencing. The Courtesy Notice provided in relevant part, as follows:

15 **Any exterior change to the appearance of your property must be**
16 **submitted for approval in accordance with the CC&Rs and Design**
17 **Guidelines. Per previously insured denial letter dated 9/29/25 the**
18 **metal fencing does not meet community design guidelines and must**
19 **be removed.**

20 Please bring this issue into compliance within **14** days from the date of this
21 inspection. If you wish to contest this notice, the process you must follow
22 is to file an appeal with the Board of Directors. Please visit
23 <https://www.homeownerresources.com/Appeals> to file your appeal.
24 Requests for an appeal must be received within **21** days of receipt of this
25 notice. ...

26 6. On November 12, 2025, Vanderbilt issued a noncompliance issue notice
27 regarding the metal fencing. This notice was a Notice of Non-Compliance which
28 imposed a \$25.00 penalty. The Notice states, in pertinent part:

29 In an effort to gain compliance, the community is inspected on a regular
30 basis. If any deviations from the community restrictions are noted, we
have been asked by the Board of Directors to inform the homeowner of
the deviation. We have become aware of violation(s) of the governing
documents in connection with your lot/unit that appears to deviate from the
community restrictions and ask that it be brought into compliance. You are
hereby notified of the following violation.

¹ See Packet (Petition attachment).

1 **Any exterior change to the appearance of your property must be**
2 **submitted for approval in accordance with the CC&Rs and Design**
3 **Guidelines. Per previously insured denial letter dated 9/29/25 the**
4 **metal fencing does not meet community design guidelines and must**
5 **be removed.**

6 There are photos of your violation available for your review. To review
7 these photos, please visit
8 <https://www.homeownerresources.com/compliance>
9 and enter the following id: V1637400.

10 **A fine of \$25.00 has been posted to your account for the violation**
11 **indicated above. Please bring this issue into compliance within 14**
12 **days from the date of this inspection. Pursuant to Arizona law, the**
13 **process to contest this notice is to appeal the fine before the fine**
14 **becomes a permanent obligation. Please visit**
15 **<https://www.homeownerresources.com/Appeals> to file your**
16 **appeal. Requests for an appeal must be received within 21 days of**
17 **the date of this notice. You will have the opportunity to present**
18 **backup documentation, if any, supporting your appeal. If the Board**
19 **approves your appeal, the fine will be reversed and your contest of**
20 **this notice will have been successful.**

21 7. On or about December 15, 2025, Vanderbilt filed its single-issue petition
22 alleging that Respondent was in violation of Article 4, Sections 4.4.2, 4.4.4, 4.4.5, 4.4.7,
23 4.8, 4.5.1, Article 5, Section 5.2.6, and Article 11, Section 11.3 of the Vanderbilt CC&Rs.
24 The stated violation was having installed the metal fencing “without prior written
25 approval from the Design Review Committee, in a manner inconsistent with the
26 harmony, landscaping, exterior design, and perimeter requirements of the community,
27 as evidenced by the Board of Directors' unanimous denial of the ARC submittal on
28 August 12, 2025, at the Board meeting, and subsequent denials of the Homeowners'
29 appeal.”²

30 8. The petition was referred to the Office of Administrative Hearings for an
 evidentiary hearing.

² Documentation of such denials were not submitted to the hearing record; however, Respondents do not dispute that the fencing had not been approved.

1 9. At hearing, Community Manager Jean Mondor testified on behalf of
2 Vanderbilt. Respondents Arthur Eckhart and Beckie Hansen Eckhart testified on their
3 own behalf.

4 9. Respondents do not disagree that the metal fencing had been installed
5 without prior approval by the architectural committee or the Board. Respondents stated
6 that they have paid or been assessed penalties: \$25.00 with the October notice; \$25.00
7 with the November Notice; and \$50.00 with the December notice.

8 10. At hearing, Respondents provided an explanation regarding why the fence
9 had been built; Respondents described discord to the point of criminal activity and
10 harassment from the neighbor including throwing things over the fence and animal
11 issues. Respondents stated that, when the neighbor [Mr. Capone] moved in, he told
12 them he was the HOA President.

13 11. Respondents indicated that there was no active homeowner's association
14 (HOA) at the time the homes were being built and that they had been told by the sales
15 agent and by the construction manager that they could do anything in the backyards but
16 would need HOA approval for the front yard. Respondents indicated that they never
17 received a copy of the CC&Rs and, essentially, believed they were allowed to do as
18 they wished in the backyards.

19 12. At hearing, Respondents provided summary information and a written
20 statement regarding the matter. In that statement, Respondents recount their efforts to
21 try to obtain consent of other neighbors and further efforts to obtain city code and/or law
22 enforcement assistance. Respondents recounted the harassment from the neighbor
23 being well known to others and to law enforcement and emphasized their perceived
24 need for protection from the neighbor. Respondents also indicated that since the fence
25 was erected in their own backyard, they had been having less trouble with harassment
26 from the neighbor. Respondents want to be able to keep the fence and argued they
27 need that level of security which the fence affords them.

28 13. Vanderbilt argued that it is permitted to, and required to, enforce the
29 governing documents which in this case (a) do not allow such fencing to be erected and
30 (b) certainly not erected without approval. Vanderbilt argued that the fence is not in

1 compliance with the applicable CC&R restrictions and that it was installed without
2 approval. Vanderbilt noted that all the Vanderbilt governing documents were recorded
3 with the County and, thus, available to residents. Vanderbilt requested that the
4 Respondents be found not to be in compliance with the CC&Rs; Vanderbilt requested
5 that Respondents be ordered to remove the fence.

6 **Referenced Authorities**

7 14. Article 4.4.2 of Vanderbilt's CC&Rs indicates there are design guidelines
8 for harmony of a design with surrounding structures and topography.

9 15. Article 4.4.4 of Vanderbilt's CC&Rs indicates there are design guidelines
10 for landscape design, content and conformity with natural desert character of the
11 property.

12 16. Article 4.4.5 of Vanderbilt's CC&Rs indicates there are "requirements
13 concerning exterior color schemes, exterior finishes, and materials, and requirements
14 concerning yard and building ornaments, recreational equipment, exterior lighting and
15 exterior furniture, and other items or improvements Visible From Neighboring Property."

16 17. Article 4.4.7 of Vanderbilt's CC&Rs indicates there are design guidelines
17 for perimeter and screen wall design and appearance.

18 18. Article 4.5 of Vanderbilt's CC&Rs requires that fences and other structures
19 or improvements may not be started "except in compliance with plans and specifications
20 therefore that have been submitted to and approved by the Design Review Committee
21 and any applicable Subsidiary Committee in accordance with this Declaration and the
22 Design Guidelines."

23 19. Article 4.8 of Vanderbilt's CC&Rs indicates that residents "aggrieved by a
24 decision of the Design Review Committee may appeal the decision to the Board in
25 accordance with procedures to be established in the Design Guidelines."

26 20. Article 5.2.6 of Vanderbilt's CC&Rs states that nothing "be done thereon
27 which may be, or may become, an annoyance or nuisance to Persons or property in the
28 vicinity of such Lot or Parcel, or which shall interfere with the quiet enjoyment of each of
29 the Owners and Occupants."
30

21. Article 11.3 of Vanderbilt's CC&Rs states as follows:³

In the event any portion of any Lot, Parcel, or Dwelling Unit is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot, Parcel or other area, or is used in a manner which violates this Declaration or any applicable Tract Declaration, or in the event the Owner of any Lot or Parcel fails to perform such Owner's obligations under this Declaration, any applicable Tract Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. *If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys, fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject and shall be secured by the Assessment Lien.*

CONCLUSIONS OF LAW

1. Ariz. Rev. Stat. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority of Title 33, Chapter 16.⁴ Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. Vanderbilt bears the burden of proof to establish that Respondents violated Vanderbilt's CC&Rs by a preponderance of the evidence.⁵ Respondents bear the burden to establish affirmative defenses by the same evidentiary standard.⁶

³ Emphasis added here.

⁴ See Ariz. Rev. Stat. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.

⁵ See Ariz. Rev. Stat. § 41-1092.07(G)(2); Ariz. Admin. Code R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁶ See Ariz. Admin. Code R2-19-119(B)(2).

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

8 4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give
9 effect to the intent of the parties. "Restrictive covenants must be construed as a whole
10 and interpreted in view of their underlying purposes, giving effect to all provisions
11 contained therein."⁹

12 5. Vanderbilt has met its burden to establish that Respondents proceeded to
13 install the subject metal fencing in violation of the various applicable Vanderbilt CC&R
14 provisions. Vanderbilt has also demonstrated that it provided an appropriate process to
15 the Respondents regarding the subject fence and that the Board had denied
16 Respondent's appeals. Therefore, the Administrative Law Judge concludes that
17 Vanderbilt has established by a preponderance of the evidence that Respondents
18 violated the applicable CC&Rs. Thus, Vanderbilt is the prevailing party and
19 Respondents shall reimburse to Vanderbilt the \$500.00 filing fee.

20 **ORDER**

21 **IT IS ORDERED** that Vanderbilt's Petition against Respondents is affirmed.

22 **NOTICE**

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

28 Done this day, May 18, 2026.

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

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

⁹ *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).

/s/ Kay Abramsohn
Administrative Law Judge

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

Susan Nicolson, Commissioner
Arizona Department of Real Estate

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