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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **AZNH REVOCABLE TRUST,**
13 **by and through**
14 **JOHN and SUSAN SULLIVAN, TRUSTEES,**
15 **REAL PARTIES IN INTEREST**

16 Plaintiff

17 v.

18 **KAY ABRAMSOHN,**
19 **ADMINISTRATIVE LAW JUDGE,**
20 **ARIZONA OFFICE OF ADMINISTRATIVE**
21 **HEARINGS,**

22 *and*

23 **TAMMY EIGENHEER,**
24 **INTERIM DIRECTOR,**
25 **ARIZONA OFFICE OF ADMINISTRATIVE**
26 **HEARINGS,**

27 *and*

ARIZONA DEPARTMENT OF REAL
ESTATE,

and

SUNLAND SPRINGS VILLAGE
HOMEOWNERS ASSOCIATION,

Defendants

Case No. CV2025-036466

MOTION TO DISMISS ARIZONA
DEPARTMENT OF REAL ESTATE,
OR IN THE ALTERNATIVE, FOR
NOMINAL PARTY STATUS

(Assigned to the Honorable Scott
Blaney)

1 Pursuant to A.R.S. § 12-911(A)(4), Defendant Arizona Department of Real Estate
2 (“Department”) moves for an order dismissing the Department as a party to this action because
3 the Department is a non-jural entity, or, alternatively, designating the Department as a nominal
4 party, with the Department to comply with any orders within its statutory authority that may
5 be issued in this litigation.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 This action arises from a Complaint for Special Action filed by AZNH Revocable
8 Trust, by and through John and Susan Sullivan, Trustees, Real Parties in Interest (“Plaintiff”)
9 in connection with an underlying dispute between the Trust and the homeowner’s association
10 (“HOA”) Sunland Springs Village Homeowners Association (“Defendant Sunland Springs”).
11 In accordance with the HOA dispute process pursuant to A.R.S. § 32-2199, *et seq.*, Plaintiff
12 filed a petition with the Department that alleged Defendant Sunland Springs had violated state
13 community association laws through a failure to retain ballots and related materials and make
14 them available for inspection. The Department reviewed the petition and referred the matter
15 to the Office of Administrative Hearings (“OAH”) to schedule a hearing on the matter, as
16 required under and to the full extent of the statutory authority provided to the Department
17 under the HOA dispute process statutes.

18 **I. THE DEPARTMENT IS A NON-JURAL ENTITY.**

19 The Department is a non-jural entity and is therefore not subject to suit in this matter.
20 In Arizona, “[a] court does not have jurisdiction until a party is brought before it that legally
21 exists and is legally capable of being sued.” *Yamamoto v. Santa Cruz Bd. of Sup’rs*, 124 Ariz.
22 538, 539 (1979), *citing Florida Medical Association, Inc. v. Spires*, 153 So.2d 756 (Fla. App.
23 1963). “Government agencies possess no inherent power and are limited to the powers and
24 duties delegated to them through their enabling statutes.” *Brillard v. Maricopa County*, 224
25 Ariz. 481, 487 ¶ 12 (2010), *citing Schwartz v. Superior Court*, 186 Ariz. 617, 619, 925 P.2d
26 1068, 1070 (App.1996); *see also Alexander v. Fund Manager*, 166 Ariz. 589, 592 (1990)
27 (“administrative agencies . . . possess only the power delegated to them by the Legislature”)

1 *citing Ayala v. Hill*, 136 Ariz. 88, 664 P.2d 238 (App.1983). As such, a government agency
2 can only sue or be sued if the legislature has so established the power or permission in the
3 agency’s governing statutes. *Braillard*, 224 Ariz. at 487 ¶ 12. If an entity’s enabling statute
4 does not contain such language, it is considered a “non-jural entity” and cannot be subject to
5 suit. *See McKee v. State*, 241 Ariz. 377, 384 ¶ 28(2016) (affirming lower court’s determination
6 that the State Forestry Division was a non-jural entity because its enabling statutes did not
7 contain a provision stating that it may sue or be sued); *See also Coombs v. Maricopa Cnty.*
8 *Special Health Care Dist.*, 241 Ariz. 320, 322 ¶ 8 (2016) (stating that the Health Care District
9 was a jural entity because its enabling statute established that it “may...[s]ue and be sued in
10 all courts and places and in all actions and proceedings”). To make this determination, courts
11 look at what the legislature has provided within the plain language of an entity’s enabling
12 statute. *McKee*, 241 Ariz. at 384 ¶ 28.

13 The Department’s enabling statutes are found under A.R.S. §§ 32-2101 through 32-
14 2199.05. There is no express language contained in any of these statutes that permit the
15 Department as an entity to sue or be sued. As such, the Department is considered a non-jural
16 entity that is not subject to suit and should be dismissed as a party from this matter. *See, e.g.,*
17 *Braillard*, 224 at 487 ¶ 13 (concluding that the Maricopa County Sheriff’s Office should be
18 dismissed from the case due to its status as a non-jural entity); *See also Melendres v. Arpaio*,
19 784 F.3d 1254, 1260 (9th Cir. 2015) (holding that the Maricopa County Sheriff’s Department
20 was improperly named as a party due to its status as a non-jural entity).

21 **II. THE DEPARTMENT IS A NOMINAL PARTY.**

22 If the Department were to remain a party in this matter, it would be doing so only as a
23 nominal party. When a party does not act as an advocate or otherwise take any position on the
24 merits of the litigation, it is considered a nominal party and exempt from liability for attorney’s
25 fees. *See Cortaro Water Users’ Ass’n. v. Steiner*, 148 Ariz. 314, 318 (1986) (“... if the agency
26 takes the role of an advocate it ceases to be a nominal party and may lose its statutory
27 protection”). Additionally, the party must not have any pecuniary or proprietary stake in the

1 outcome of an action to qualify as a nominal party. *Bromley Group, Ltd v. Arizona Dept. of*
2 *Revenue*, 170 Ariz. 532, 539 (1991). If there is a possibility that the party could be liable for
3 damages or other specific relief, then it cannot qualify as a nominal party. *Id.*; *see also Arizona*
4 *Tax Research Ass'n. v. Maricopa County*, 162 Ariz. 94, 96 (1989) (Department of Revenue
5 held to be a nominal party when the complaint alleged no wrongdoing on behalf of the
6 Department and the Department took no active part in the proceedings), *rev'd in part on other*
7 *grounds* 163 Ariz. 255 (1989). In addition, the mere existence of statutory powers belonging
8 to an agency does not disqualify it as a nominal party. *Bromley*, 170 Ariz. at 540.

9 The Department's sole involvement throughout the entirety of this matter has been in
10 an administrative capacity acting as a conduit for HOA disputes pursuant to its statutory
11 framework. Under A.R.S. § 32-2199.01, homeowner's association ("HOA") disputes can be
12 handled through the HOA dispute process, as an alternative to the civil court system. In 2016,
13 the legislature passed legislation that moved the HOA dispute process to the Department and
14 provided limited statutory authority governing how the Department was to administer the
15 process. A.R.S. § 32-2199, *et seq.* Pursuant to these statutes, the Department does not have
16 any regulatory or adjudicative authority over HOAs or the dispute process. *Id.* Specifically,
17 these statutes only permit the Department to review a petition that is filed by a homeowner or
18 an association to determine if it should be referred to OAH for an administrative hearing .
19 A.R.S. § 32-2199.01(D). Once the matter has been referred to OAH, the Department does not
20 have any further involvement except for requests for rehearing. A.R.S. § 32-2199.04 Thus, the
21 Department has no role in this dispute and is therefore incapable of advocating any position or
22 having any pecuniary or proprietary stake in the outcome of the case.

23 Additionally, the complaint does not allege any wrongdoing from the Department and
24 does not request any specific relief from the Department. As such, the Department is not liable
25 for damages or any other specific relief in this case. The only reason the Department has been
26 named as a party in this matter is because of its statutory requirement to initiate the dispute
27 resolution process. Since the Department has not acted, and will not act, as an advocate in this

1 matter, does not have any pecuniary or proprietary stake in the outcome, and is not subject to
2 liability for damages or other relief, it is a nominal party, at most, in this litigation.

3 For these reasons, the Department respectfully requests entry of an order dismissing the
4 Department as a party or, alternatively, designating the Department as a nominal party, with
5 the Department to comply by whatever orders may be issued in this litigation.

6 **RESPECTFULLY SUBMITTED** this 9th day of December, 2025

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8 KRIS MAYES
9 Attorney General

10 /s/ Raya Gardner
11 Raya Gardner
12 Assistant Attorney General
13 *Attorney for The AZ Department of Real Estate*
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1 **ORIGINAL** electronically transmitted
2 to the Clerk of the Court for filing using
3 AZTurboCourt this 9th day of December, 2025

4 **COPY** of the foregoing e-mailed
5 this same date to:

6 AZNH Revocable Trust
7 c/o John Sullivan
8 info@sullivanappeals.com
9 *Plaintiff*

10 Kara Karlson
11 Assistant Attorney General
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17 *Attorney for Defendant Sunland Springs Village Homeowners Association*

18 /s/ *S. Hack*
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