

Atty. JOHN SULLIVAN  
1909 E. Ray Rd., Suite 9198  
Chandler, Arizona 85225  
(480) 818-5070  
Bar No. 023018  
Attorney for Plaintiff

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

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

Plaintiff

v.

**KAY ABRAMSOHN,**  
**ADMINISTRATIVE LAW JUDGE,**  
**ARIZONA OFFICE OF**  
**ADMINISTRATIVE HEARINGS,**  
*et al.*

Defendants

No. CV2025-036466

**PLAINTIFF’S REPLY  
TO  
SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION  
ON  
JUDGMENT ON THE PLEADINGS**

(Original Special Action)

Assigned to:  
Hon. Scott Blaney

1

1 **I. Introduction**

2 Sunland Springs Village Homeowners Association (“HOA”) is *not* a party to this Original  
3 Special Action. See sec. **VII** (and references therein) of “Plaintiff’s Motion for Judgment on the  
4 Case Filings.”

5 The Plaintiff (“Trust”) replies now solely as a matter of prudence.  
6

1       **I.       The HOA’s “Factual Background” is Not Reliable**

2       The Trust disagrees with the HOA’s “Factual Background.” It emphasizes argument with  
3       biased characterizations rather than relevant facts.

4       The underlying matter is a dispute between the Trust and the HOA wherein the Trust alleges  
5       the HOA failed to retain electronic ballots for inspection as required by A.R.S. § 33-1812. The  
6       chief problem with the HOA portraying themselves as the righteous party, is that the ALJ ruled  
7       against the Trust without ever finding that the HOA complied with the statute.

8       The relevant and undisputed facts appear in the Plaintiff’s *Motion for Judgment on the*  
9       *Filings*.

10  
11       **II.       The HOA Failed to Answer**

12       The HOA *incorrectly claims* their Answer is not due until January 12, 2026.

13       The HOA submitted an “Exhibit B” with their Response which they claim was provided to  
14       HOA counsel by the Trust as “a pre-written letter for [HOA] counsel to use to accept service.”  
15       That is false. Their “Exhibit B” was created by Atty. Gallacher and not provided by the Trust.  
16       Please see Trust’s **Exhibit A** accompanying this Reply (“Notice of Law Suit and Request for  
17       Waiver of Service of Summons”) which the HOA received from the Trust on October 10, 2025.

18       In the HOA Response, they admit they received the Trust’s request to waive formal service  
19       on October 10, 2025, and on Nov. 12, 2025, the HOA attorney signed a waiver he created. See  
20       HOA “Response” p.4, lines 11-25. Because the waiver request was sent and because the HOA  
21       counsel returned a signed waiver of service, R.Civ.P. 4.1(c)(3) controls. That Rule required the  
22       HOA to file an Answer or a R.Civ.P. 12 response not later than “60 days after the request was  
23       sent.” Thus, 60 days after October 10, 2025, is December 9, 2025. No Answer or Rule 12  
24       response has been filed by the HOA, and the Trust dismissed the HOA from this case per  
25       R.Civ.P. 41(a)(1)(A)(i) (Voluntary Dismissal) on December 17, 2025.

26       //

27  
28       //

1       **III.    No Retroactive Application**

2       The HOA complains that A.R.S. § 41-1092.07(A) cannot be applied retroactively. They cite  
3       A.R.S. § 1-244, but that statute does not support their argument. The statute reads, in full: “No  
4       statute is retroactive unless expressly declared therein.” *Id.*

5       “[A] statute is not necessarily retroactive in application simply because it may relate to  
6       antecedent facts.” *State v. Aguilar*, 218 Ariz. 25, 32, ¶25 (Div. 2, 2008) (cites omitted).  
7       “Rather, legislation may not disturb vested substantive rights by retroactively changing the law  
8       that applies to completed events. And, a statute is not impermissibly retroactive if it is merely  
9       procedural and does not affect an earlier established substantive right.” *Id.*

10       A.R.S. § 41-1092.07(A) does not disturb any vested, substantive rights of the HOA nor does  
11       it change the law applicable to any completed event. The statute is procedural. It merely  
12       operates to change the Administrative Law Judge (“ALJ”) assigned to the administrative  
13       hearing; the HOA has no right to have a hearing with an ALJ of their choosing.

14       Without giving a pin-cite, the HOA claims that Stuart v. Ins. Co. of N. Am., 152 Ariz. 78  
15       (Div. 1, 1986) stands for the following:

16  
17               “Arizona Courts have repeatedly held that the statutory scheme in place at the  
18               time a matter is filed generally governs the action. Courts have emphatically  
19               emphasized the non-retroactive application of statutes in situations where the  
20               substantive rights of the parties are affected by statutory change.”

21  
22       HOA “Response” p.5, line 27 continuing to p.6, lines 1-6.

23       Counsel for the Trust cannot find that holding anywhere in the cited case. Instead, counsel  
24       found:

25  
26               “A statute may operate retroactively if it is merely procedural and does not affect  
27               an earlier established substantive right, but as a general rule a statute will be  
28               given prospective effect only, absent a plain indication of an intent that it operate  
29               retroactively.”

1 *Stuart* at 80, headnote 3 (cites omitted). [The Court in *Stuart* interpreted a statute by  
2 determining “legislative intent”; a method of statutory interpretation which has been  
3 disapproved by the Arizona Supreme court in *Tunkey, infra.*]  
4

#### 5 **IV. Statutory Interpretation – Secondary Sources Not Applicable**

6 The HOA has relied exclusively on secondary sources to argue that the statute [A.R.S. § 41-  
7 1092.07(A)] should not be applied as written. See, generally, the HOA’s Response, p.6 *et seq.*  
8 referencing: R.Civ.P. 42.1 (Change of Judge); R2-19-102 [Office of Administrative Hearings  
9 (“OAH”) procedures] (Applicability); R2-19-106 (OAH procedures) (Motions); and, *King v.*  
10 *Superior Court*, 108 Ariz. 492 (1972) (interpreting R.Civ.P. 42.1).

11 In the Trust’s “Reply” on Notice of Dismissal as to the HOA (**sec. IV**), the process of  
12 statutory interpretation is explained (as it now exists) according to *State ex rel. Arizona Dep’t of*  
13 *Revenue v. Tunkey*, 254 Ariz. 432, 437, ¶¶ 23-24 (2023), Justice Bolick (writing a concurrence  
14 for a majority of the Court). The Trust fully incorporates **sec. IV** herein. *Tunkey* requires  
15 statutory interpretation by “plain meaning.” “Under this plain meaning analysis, courts look  
16 first to the language of the provision, and if the statutory language is clear, judicial construction  
17 is neither required nor proper.” *State v. Brown*, 577 P.3d 14, 19, ¶ 20 (Ariz. Supreme Court,  
18 2025) (interpreting self-defense statutes).

19 Therefore, the Statute must be interpreted according to its plain meaning:

20 A party to a contested case or appealable agency action is entitled to one  
21 peremptory change of administrative law judge.

22 A.R.S. § 41-1092.07(A) (“the Statute”).  
23

#### 24 **a. Separation of Powers**

25 The HOA places heavy emphasis on R.Civ.P. 42.1 to argue that the Statute should be  
26 interpreted by use of secondary sources. As explained in *Tunkey*, Courts “should cogently and  
27 consistently apply a plain meaning approach to statutory interpretation going forward.” *Tunkey*  
28 at 437 ¶ 24. The words of a statute are the law. *Id.* ¶ 26.

1 [The Trust also wants the Court to know what the HOA did not disclose; R.Civ.P. 42.1  
2 contains this provision:

3 *In actions remanded from an appellate court, the right to a change of judge is*  
4 *renewed and no event connected with the first trial constitutes a waiver:*

5 *(1) if the appellate decision requires a new trial; and*

6 *(2) the party seeking a change of judge--or the side on which the party*  
7 *belongs--has not previously exercised its right to a change of judge in the*  
8 *action.*

9 *R.Civ.P. 42.1(e).*]

10 In addition to the “plain meaning analysis” required for statutory construction, there is a  
11 **separation of powers** blockade.

12 The right to a change of ALJ in an administrative proceeding is part of the Uniform  
13 Administrative Hearing Procedures (A.R.S. §§ 41-1092 to 41-1092.12) created by the  
14 Legislature. The HOA does not cite, *nor can the Trust find*, any statute or law which would  
15 allow a Judicially-created rule (or any case law arising from such rule) to contravene, modify or  
16 control the Uniform Administrative Hearing Procedures.

17 “In Arizona, the legislature is endowed with the legislative power of the State, and has  
18 plenary power to consider any subject within the scope of government unless the provisions of  
19 the Constitution restrain it. Put another way, the legislature has all power not expressly  
20 prohibited or granted to another branch of the government.” *State ex rel. Napolitano v. Brown*,  
21 194 Ariz. 340, 342 ¶ 5 (Ariz. Supreme Court, 1999) (cites omitted).

22 Pursuant to Ariz. Const. art. IV, Pt. 1 § 1, “The legislative authority of the state shall be  
23 vested in the legislature.”

24 And, per Ariz. Const. art. III:

25  
26 The powers of the government of the state of Arizona shall be divided into three  
27 separate departments, the legislative, the executive, and the judicial; and, except  
28 as provided in this constitution, such departments shall be separate and distinct,

1 and no one of such departments shall exercise the powers properly belonging to  
2 either of the others.  
3

4 The Trust finds nothing in the Arizona Constitution which grants the Judiciary the power to  
5 make, amend or repeal any part of the Legislatively-created, Uniform Administrative Hearing  
6 Procedures. Consequently, R.Civ.P. 42.1 cannot be applied to contravene or limit the plain  
7 meaning of the Statute.  
8

9 **b. Peremptory Acts Are Not Motions**

10 The HOA wants the Court to consider secondary sources to find that the Trust’s peremptory  
11 act to change an ALJ is subject to the rules for “motions.”

12 Per A.A.C. R2-19-106, a ‘motion’ is a request for a ruling from an ALJ. The Trust did not  
13 submit a **request** for a ruling to the ALJ, nor to anybody else. The exercise of a peremptory  
14 right to change an ALJ is not a motion.

15 Black’s Law Dictionary defines “peremptory” as:

- 16 1. Final; absolute; conclusive; incontrovertible <the king’s peremptory order>.
- 17 2. Not requiring any shown cause; arbitrary <peremptory challenges>.

18 *Peremptory*, Black’s Law Dictionary (12th ed. 2024).

19 A Westlaw search reveals that there are about 6 cases nationwide where a court found it  
20 necessary to define “peremptory” and all courts adopted the Black’s Law Dictionary definition.  
21 No Arizona case has addressed the definition. The lack of cases defining “peremptory” may be  
22 due to the common and ordinary use of the word. See, e.g., Merriam-Webster’s Collegiate  
23 Dictionary, 11th Edition (Kindle Version) defines “peremptory” as:

- 24 1 a : putting an end to or precluding a right of action, debate, or delay;
- 25 not providing an opportunity to show cause why one should not comply.

26 Based upon the above definitions, when a party exercises the peremptory right to change an  
27 administrative law judge under A.R.S. § 41-1092.07(A), it becomes a legislative fiat; it is not a  
28 ‘motion’ subject to anyone’s discretionary consideration.

1        **V.    Conclusion**

2        For the reasons stated in the Trust’s *Motion for Judgment on the Case Filings* and in this  
3        *Reply*, the Trust respectfully restates its request for Judgment in its favor on all matters in this  
4        Original Special Action.

5  
Dated this 29<sup>th</sup> day of December, 2025.        /s/ *John F. Sullivan*  
John F. Sullivan, Esq. (Bar # 023018)  
Attorney for Plaintiff  
1909 E. Ray Rd., Suite 9198  
Chandler, AZ. 85225  
480-818-5070  
email: Info@SullivanAppeals.com

**CERTIFICATE of SERVICE**

A copy hereof shall be sent via the Court’s electronic filing and delivery system this date, to:

Asst. Attorney General Deanie Reh (counsel for Az. Dept. of Real Estate) at  
Deanie.Reh@azag.gov;

Asst. Attorney General Raya Gardner (counsel for Az. Dept. of Real Estate) at  
Raya.Gardner@azag.gov; and,

Asst. Attorney General Kara Karlson (counsel for Defendant’s Eigenheer & Abramsohn) at  
Kara.Karlson@azag.gov.

A courtesy copy shall be sent to:

Atty. Chad Gallacher (counsel for Sunland Springs Village Homeowners Assoc.) at  
cgallacher@hoalaw.biz.

/s/ *John F. Sullivan*

Counsel for AZNH Revocable Trust

# PLAINTIFF'S EXHIBIT A

Atty. JOHN SULLIVAN  
1909 E. Ray Rd., Suite 9198  
Chandler, Arizona 85225  
(480) 818-5070  
Bar No. 023018  
Attorney for Plaintiff

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

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

Plaintiff

v.

**KAY ABRAMSOHN,  
ADMINISTRATIVE LAW JUDGE,  
ARIZONA OFFICE OF  
ADMINISTRATIVE HEARINGS,**

*and*

**TAMMY EIGENHEER,  
INTERIM DIRECTOR,  
ARIZONA OFFICE OF  
ADMINISTRATIVE HEARINGS,**

*and*

**ARIZONA DEPARTMENT OF REAL  
ESTATE,**

*and*

**SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION,**

Defendants

No. CV2025-036466

**Notice of Law Suit and  
Request for Waiver of Service of  
Summons**

TO: Counsel for Sunland Springs Village Homeowners Association,

1. A LAWSUIT HAS BEEN COMMENCED AGAINST YOU (OR THE PERSON OR ENTITY WHOM YOU REPRESENT). A COPY OF THE COMPLAINT ACCOMPANIES THIS NOTICE. THE COMPLAINT HAS BEEN FILED IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA AND HAS BEEN ASSIGNED CASE NUMBER **CV2025-036466**.
  
2. THIS IS NOT A FORMAL SUMMONS OR NOTIFICATION FROM THE COURT, BUT RATHER MY REQUEST THAT YOU SIGN AND RETURN THE ACCOMPANYING WAIVER OF SERVICE IN ORDER TO SAVE THE COST OF SERVING A JUDICIAL SUMMONS AND A COPY OF THE COMPLAINT. THE COST OF SERVICE WILL BE AVOIDED IF I RECEIVE A SIGNED COPY OF THE WAIVER, VIA EMAIL AT *INFO@SULLIVANAPPEALS.COM*, WITHIN THIRTY (30) DAYS AFTER THE DATE DESIGNATED BELOW AS THE DATE ON WHICH THIS NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS WAS SENT.
  
3. IF YOU COMPLY WITH THIS REQUEST AND RETURN THE SIGNED WAIVER OF SERVICE, THE WAIVER WILL BE FILED WITH THE COURT AND NO SUMMONS WILL BE SERVED. THE ACTION WILL THEN PROCEED AS IF A SUMMONS AND COMPLAINT HAD BEEN SERVED, AND AN ANSWER (OR OTHER RESPONSE) TO THE COMPLAINT MUST BE FILED IN COURT AND SERVED UPON ME (ELECTRONICALLY OR OTHERWISE) WITHIN SIXTY (60) DAYS FROM THE DATE DESIGNATED BELOW.
  
4. IF YOU DO NOT RETURN THE SIGNED WAIVER WITHIN THE TIME INDICATED, I WILL TAKE APPROPRIATE STEPS TO EFFECT FORMAL SERVICE IN A MANNER AUTHORIZED BY THE ARIZONA RULES OF CIVIL PROCEDURE AND I WILL ASK THE COURT TO REQUIRE YOU (OR THE PERSON OR ENTITY WHOM YOU REPRESENT) TO PAY THE FULL COSTS OF SUCH SERVICE. PLEASE READ

THE STATEMENT CONCERNING THE DUTY OF PARTIES TO AVOID UNNECESSARY COST OF SERVICE OF SUMMONS, WHICH IS SET FORTH AT THE END OF THE ENCLOSED “WAIVER OF SERVICE OF SUMMONS & COMPLAINT” FORM.

I AFFIRM THAT THIS NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS WAS SENT TO YOU ON BEHALF OF THE PLAINTIFF ON THE DATE INDICATED BELOW.

NOTICE AND REQUEST SENT THIS 10<sup>TH</sup> DAY OF OCTOBER 2025, VIA EMAIL.

/s/ *John F. Sullivan*

John F. Sullivan, Esq. (Bar # 023018)  
Attorney for Plaintiff  
1909 E. Ray Rd., Suite 9198  
Chandler, AZ. 85225  
480-818-5070  
email: [Info@SullivanAppeals.com](mailto:Info@SullivanAppeals.com)

Atty. JOHN SULLIVAN  
1909 E. Ray Rd., Suite 9198  
Chandler, Arizona 85225  
(480) 818-5070  
Bar No. 023018  
Attorney for Plaintiff

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

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

Plaintiff

v.

**KAY ABRAMSOHN,  
ADMINISTRATIVE LAW JUDGE,  
ARIZONA OFFICE OF  
ADMINISTRATIVE HEARINGS,**

*and*

**TAMMY EIGENHEER,  
INTERIM DIRECTOR,  
ARIZONA OFFICE OF  
ADMINISTRATIVE HEARINGS,**

*and*

**ARIZONA DEPARTMENT OF REAL  
ESTATE,**

*and*

**SUNLAND SPRINGS VILLAGE  
HOMEOWNERS ASSOCIATION,**

Defendants

No. CV2025-036466

**Waiver of Service of  
Summons & Complaint**

//

To Counsel for Plaintiff, AZNH Revocable Trust:

I acknowledge receipt of your request that I waive service of a summons in the action of AZNH Revocable Trust v. Kay Abramsohn, et al, which is case number CV2025-036466 in the Superior Court of the State of Arizona in and for the County of Maricopa. I also have received a copy of the complaint in the action.

I agree to save the cost of service of a summons and complaint in this lawsuit by waiving such service.

I (or the person or entity whom I represent) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the person or entity whom I represent) if an answer or motion under Civil Rule 12 is not served upon you within sixty (60) days after October 10, 2025.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Signed: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

//

//

## DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary costs of service of the summons and a pleading. A defendant who, after being notified of an action and asked by a plaintiff to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney a response to the complaint and also must file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.