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## ORDER

1           7.     Petitioner filed the Response asserting that Respondent was a "Planned  
2 Community" and therefore was required to comply with the statutes referenced in her  
3 petition.

4           8.     In the Response, Petitioner asserted that "Respondents' shareholders are  
5 Lessees and OWNERS under a proprietary Lease." Petitioner did not identify what the  
6 shareholders owned, other than a share of the co-operative.

7           9.     In its Reply, Respondent argued that Petitioner failed to present any  
8 evidence or argument that the shareholders separately owned lots, parcels, or units or  
9 that Respondent met the definition of a "Planned Community."

#### 10                   REFERENCED STATUTES

11           10.    A.R.S. § 33-1802(4) provides as follows:

12           "Planned community" means a real estate development that includes real  
13 estate owned and operated by or real estate on which an easement to  
14 maintain roadways or a covenant to maintain roadways is held by a  
15 nonprofit corporation or unincorporated association of owners, that is  
16 created for the purpose of managing, maintaining or improving the property  
17 and in which the declaration expressly states both that *the owners of*  
*separately owned lots, parcels or units* are mandatory members and that the  
18 owners are required to pay assessments to the association for these  
19 purposes. Planned community does not include any of the following:

- 20           (a) A timeshare plan or a timeshare association that is governed by  
21 chapter 20 of this title.
- 22           (b) A condominium that is governed by chapter 9 of this title.
- 23           (c) A real estate development that is not managed or maintained by  
24 an association.

25           Emphasis added.

26           11.    A.R.S. § 33-1201 provides that that Condominium Act only applies to  
27 "Condominiums".

28           12.    A.R.S. § 33-1202(10) defines "Condominium" as follows:

29           "Condominium" means real estate, portions of which are designated for  
30 separate ownership and the remainder of which is designated for common  
ownership solely by the owners of the separate portions. Real estate is not a  
condominium unless the undivided interests in the common elements are  
vested in the unit owners.

### **CONCLUSIONS OF LAW**

1. Pursuant to A.R.S. § 32-2199.01(A), “[f]or a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities.” That statute provides that such petitions will be heard before the Office of Administrative Hearings.

2. As the Department only has the jurisdiction to hear disputes between owners and condominium associations or planned community associations, Respondent must be found to be one or the other for the dispute to properly be before the Office of Administrative Hearings.

3. In its Motion, Respondent argued that Respondent’s shareholders were Lessees, not owners of any separately owned lots, parcels, or units.

4. Petitioner argued that Respondent’s shareholders were Lessees *and* owners under the proprietary lease.

5. While the shareholders may be owners of a share of Respondent as an entity, nothing in any of the pleadings indicated that the shareholders were owners of any “separately owned lots, parcels or units.”

6. Accordingly, the Administrative Law Judge concludes that Respondent’s cooperative does not fall within the definition of a planned community, as their purposes and functions are separate and distinct.

7. Therefore, because Respondent does not fall within the definition of a planned community, the Department does not have jurisdiction to hear a dispute between Petitioner and Respondent.

### **ORDER**

**IT IS ORDERED** granting Respondent’s Motion to Dismiss. The hearing in this matter is vacated from the calendar of the Office of Administrative Hearings.

1  
2 **NOTICE**

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

8 Done this day, September 5, 2023.

9 /s/ Tammy L. Eigenheer  
10 Administrative Law Judge

11 Transmitted by either mail, e-mail, or facsimile September 5, 2023 to:

12 Susan Nicolson  
13 Commissioner  
14 Arizona Department of Real Estate  
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16 Phoenix, Arizona 85007  
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