

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 George Wolchko,
3 Petitioner,
4 v.
5 Victoria Manor Management & Property
6 Owners Association,
7 Respondent.

No. 25F-H025-REL

**ADMINISTRATIVE LAW
JUDGE DECISION**

8 **HEARING:** April 14, 2025.

9 **APPEARANCES:**

10 For Petitioners: George Wolchko.

11 For Respondents: Christopher Duren.

12 **ADMINISTRATIVE LAW JUDGE:** Samuel Fox

13 **EXHIBITS ADMITTED INTO EVIDENCE:** Notice of Hearing File, provided by the
14 Department of Real Estate. Petitioners' Exhibit Packet, April 14, 2025. Respondent's
15 Exhibits A, B, D, E, G, H, I, J, K, L, M, N, O, P, R, T, U, Y, Z, BB, HH.

16 **FINDINGS OF FACT**

17 **PETITIONERS' CLAIM**

18 1. Victoria Manor Management & Property Owners Association
19 (Respondent) is a planned community association in Mesa, Arizona.

20 2. George Wolchko (Petitioner) owned a home located at 45 N. Phyllis
21 Building 4 and was a member of Respondent.

22 3. On or about November 25, 2024, Petitioner filed a four-issue Petition with
23 the Arizona Department of Real Estate (Department) alleging that Respondent had
24 violated Planned Community Statutes, A.R.S. §§ 33-1803(A), 1804(A), and 1805 and
25 10-11601(A); its Bylaws, Articles III.4, IV.1, IV.3, and X; and CC&Rs, Sections 4.04,
26 5.01, 5.03, and 9.07. The four issues identified in the Petition, for which Petitioners paid
27 the requisite \$2,000.00 filing fee, were as follows:

i) Violation of AZ Law on Delivery of Community Documents: The HOA violated A.R.S. § 33-1805, A.R.S. § 10-11601(A), Bylaws, Article X, and CCRs, Article IX, Section 9.07 by failing to provide the Kachina Management contract, despite numerous requests and legal obligations to make such records available.

ii) Failure to Hold a Special HOA Meeting: The HOA violated A.R.S. § 33-1804(A), Bylaws, Article III, Section 4, and CCRs, Article V by failing to hold a special meeting requested by a valid petition submitted by George Wolchko and Terrance Greer, signed by 25% of members.

iii) Failure to Uphold CCRs Regarding Common Wall Repairs: The HOA violated CCRs, Section 4.04, Bylaws, Article IV, Section 3, and A.R.S. § 33-1803(A) by refusing to repair a jointly owned common wall damaged by an HOA-sanctioned electrician and failing to reimburse George Wolchko for subsequent repairs.

iv) Violations of HOA Elections Procedures and Community Documents: The HOA violated A.R.S. § 33-1804(A), A.R.S. § 33-1805, Article of Incorporation, Article VI, Bylaws, Article IV, Section 1, and CCRs, Article V, Section 5.03 by inconsistently applying standards, allowing a candidate to serve and vote despite unpaid fines while invalidating George Wolchko's vote over a disputed \$9.90 charge, and failing to seat the required number of board members.¹

4. The forth complaint item was limited to failure to maintain the required number of board members.

5. Respondent, through R. Mark Rounsaville, filed a written answer to the Petition, denying that it had violated any Bylaws or statutory provisions and claiming that the allegations were all false.

6. The Department referred the Petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

7. A hearing was held on April 14, 2025. Administrative Notice was taken of the agency record. Petitioner testified on their own behalf. Joseph Kidd testified for Respondent.

REFERENCED BYLAWS²

8. Article III, Section 4 provided in relevant part as follows:

¹ Not. of Hr'g. File, Homeowners Association (HOA) Dispute Process Petition. (Emphasis removed.) (All errors included in original.)

² See Resp. Exh. B.

1 Special Meetings. Special meetings of the Members may be called by the
2 President, by resolution of a majority of the Board of Directors or by a
3 petition signed by at least twenty-five percent of the votes in the
4 Association and presented to the Secretary or in such other manner as is
5 required by law. The notice of any special meeting shall state the date and
6 hour and the place of such meeting and the purpose or purposes thereof.
7 No business shall be transacted at a special meeting except as stated in
8 the notice thereof.

9 9. Article IV, Section 1 provided in relevant part as follows:

6 Number of Qualifications of Board of Directors. The affairs of the
7 Association shall be governed by a Board of Directors composed of no
8 less than three (3) persons, all of whom must be Owners of Lots or the
9 spouse of an Owner. The Board may increase the number as long as it is
10 an odd number, and any new positions must be filled at the annual
11 meeting.

12 10. Article IV, Section 3 provided in relevant part as follows:

13 Section 3. Without limiting the generality of Section 2 of this Article, the
14 Board of Directors shall be responsible for the following:

15 Care, upkeep and surveillance of the Common Area and Common
16 Elements and related facilities thereon. . . .

17 Employment and dismissal of the personnel necessary for the
18 maintenance and the operation of the Common Area and Common
19 Elements and related facilities thereon.

20 Employment of a professional management agent at the discretion of the
21 Board and, at a compensation established by the Board of Directors to
22 perform such duties and services as the Board shall authorize. The duties
23 conferred upon the management agent by the Board of Directors may at
24 any time be revoked, modified or amplified by a majority of the Board of
25 Directors at a duly constituted meeting.

26 To make repairs on the Lots where such repairs are required for the
27 welfare or safety of the Lots or residents thereon. . . .

The foregoing enumeration of specific responsibilities shall not be deemed
to limit any other power or duty of the Board of Directors arising by law or
under the Declaration, Articles of Incorporation or these Bylaws.

11. Article X provided in relevant part as follows:

Section 1. Maintenance of Books of Account and Other Records. The
Board of Directors shall cause to be maintained complete books of
account concerning all funds, assets and liabilities of the Association. The
Association shall also keep complete minutes of the meetings of its
Members, Board of Directors and any committees thereof and a list of the
names and addresses of all Members entitled to vote. All such relevant

books of account and their records shall be open to inspection upon request according to the Arizona planned community statutes.

REFERENCED STATUTES

12. A.R.S. § 33-1803(A) provides as follows:

Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten percent of the amount of the unpaid assessment and may be imposed only after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.

13. A.R.S. § 33-1804(A) provides as follows:

Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be allowed to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall allow a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may audiotape or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association shall not require advance notice of the audiotaping or videotaping and may adopt reasonable rules governing the audiotaping and videotaping of open portions of the meetings of the board and the membership, but such rules shall not preclude such audiotaping or videotaping by those attending, unless the board audiotapes or videotapes the meeting and makes the unedited audiotapes or videotapes available to members on request without restrictions on their use as evidence in any dispute resolution process.

Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

2. Pending or contemplated litigation.

3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

14. A.R.S. § 33-1805 provides as follows:

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.

2. Pending litigation.

1 3. Meeting minutes or other records of a session of a board meeting that is
2 not required to be open to all members pursuant to section 33-1804.

3 4. Personal, health or financial records of an individual member of the
4 association, an individual employee of the association or an individual
5 employee of a contractor for the association, including records of the
6 association directly related to the personal, health or financial information
7 about an individual member of the association, an individual employee of
8 the association or an individual employee of a contractor for the
9 association.

6 5. Records relating to the job performance of, compensation of, health
7 records of or specific complaints against an individual employee of the
8 association or an individual employee of a contractor of the association
9 who works under the direction of the association.

8 C. The association shall not be required to disclose financial and other
9 records of the association if disclosure would violate any state or federal
10 law.

11 **15.** A.R.S. § 10-11601 provides as follows:

12 A corporation shall keep as permanent records minutes of all meetings of
13 its members and board of directors, a record of all actions taken by the
14 members or board of directors without a meeting and a record of all
15 actions taken by a committee of the board of directors on behalf of the
16 corporation.

16 **REFERENCED COVENANTS, CONDITIONS AND RESTRICTIONS³**

17 **16.** CC&R Section 4.04 provides as follows:

18 Common Walls. The rights and duties of owners with respect to common
19 walls shall be as follows:

- 20 A. Each wall, including patio walls and fences, which is constructed as
21 part of the original construction of the improvements of any Lot, any
22 part of which is placed on the dividing line between separate Lots, shall
23 constitute a common wall. With respect to any such wall, each of the
24 adjoining Lot Owners shall assume the burden and be entitled to the
25 benefits recited in this Section 4.04 and to the extent no inconsistent
26 herewith, the general rules of law regarding common walls shall be
27 applied thereto.
- B. The Owners of contiguous Lots who have a common wall shall have
reciprocal easements for support and an equal right to use such wall
provided that such use by one Owner does not interfere with the use
and enjoyment of same by the other Owner.
- C. In the event any common wall is damaged or destroyed through the act
of one adjoining Owner, or any of his/her guests or agents or members

³ See Resp. Exh. A.

of his/her family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, if required by Local law, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the other Owner.

- D. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any common wall without the prior consent of the Board. In addition to meeting the other requirements of these restrictions and of any building code or similar regulations or ordinances, or Owner proposing to modify, make additions to or rebuild the improvements on his/her Lot in any manner which requires the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall determine the adjoining Owner's preferences concerning the proposed modifications, extension or alteration of the common wall prior to giving any written consent thereto.

17. CC&R Section 5.01 defines several terms, including the following:

A. Association. The Association is or shall be an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, By-Laws and this Declaration. The Association shall be in existence prior to the conveyance of the first Lot by Declarant.

B. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as same may be amended from time to time. The composition of the Board shall be defined in the By-Laws.

18. CC&R Section 5.03 provides as follows:

Voting Rights. The Association shall have two classes of voting membership: Class A: Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. . .

19. CC&R Section 9.07 provides as follows:

Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid addressed as follows: [I]f to an Owner to the address of the Owner within the subdivision . . . provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

HEARING EVIDENCE

COMPLAINT NUMBER 1:

Violation of AZ Law on Delivery of Community Documents: The HOA violated A.R.S. § 33-1805, A.R.S. § 10-11601(A), Bylaws, Article X, and CCRs, Article IX, Section 9.07 by failing to provide the Kachina Management contract, despite numerous requests and legal obligations to make such records available.

20. On or around April 10, 2024, Respondent entered a management agreement with Kachina Management, Inc. (Kachina).⁴

21. On May 6, 2024, Petitioner requested a copy of Respondent's contract with Kachina.⁵ On May 26, 2024, he submitted another request for a copy of many documents, including asking for the Kachina contract again.⁶

22. On May 29, 2024, Kachina informed Petitioner that the documents would be available at their office on June 3 or 4, 2024.⁷ Petitioner agreed to June 3, 2024.⁸

23. On May 30, 2024, Petitioner requested an electronic copy.⁹

24. Petitioner canceled the in person review and again requested an electronic copy.¹⁰ In response, Kachina offered to schedule another time to review.¹¹ Petitioner accused Kachina of only allowing him to review the documents in person;¹² Kachina argued that it had made the documents reasonably available and that satisfied its obligation.¹³

25. Kachina provided a digital copy of other documents on November 7, 2024.¹⁴

⁴ See Resp. Exh. D.

⁵ See Comp. Exh. 1.02.

⁶ See Comp. Exh. 1.07.

⁷ See Resp. Exh. Z.

⁸ See *id.*

⁹ See Resp. Exh. AA.

¹⁰ See Comp. Exh. 1.11.

¹¹ See Comp. Exh. 1.12.

¹² See Comp. Exh. 1.13.

¹³ See Comp. Exh. 1.10.

¹⁴ See Comp. Exh. 1.22.

COMPLAINT NUMBER 2:

Failure to Hold a Special HOA Meeting: The HOA violated A.R.S. § 33-1804(A), Bylaws, Article III, Section 4, and CCRs, Article V by failing to hold a special meeting requested by a valid petition submitted by George Wolchko and Terrance Greer, signed by 25% of members.

26. On March 16, 2024, Petitioner submitted a petition to remove the current Board of Directors (Board).¹⁵ Respondent issued a notice to the membership, and set a special meeting for April 2, 2024.¹⁶ Petitioner's ballot was sent to his Missouri address instead of his Arizona address.¹⁷ Petitioner did not receive notice, so he did not attend the special meeting.¹⁸

27. Petitioner sought another special meeting to address damage to his wall, and on May 24, 2024, Petitioner asked the Board if they could mutually agree to a meeting or if he would be required to submit a formal request for a special meeting.¹⁹ The Board did not agree to a meeting.

28. On May 30, 2024, Petitioner contacted Kachina to request a convenient date and time for the special meeting prior to submitting the petition.²⁰ On June 19, 2024, Petitioner submitted his formal request, signed by himself and Terrance Greer, which constituted 25% of the members, to "hold an emergency HOA meeting to address repairs on a community common wall in July 1, 2024 at 10 am AZ time."²¹

29. On June 25, 2024, Petitioner sent an email to Kachina stating, "[h]ere is the law that gives me the power to request a special meeting with the signatures collected."²²

¹⁵ See Comp. Exh. 2.04; see also Resp. Exh. E.

¹⁶ See Resp. Exh. E.

¹⁷ See Comp. Exh. 2.06.

¹⁸ See *id.*; see also Wolchko Testimony.

¹⁹ See Comp. Exh. at 3.11.

²⁰ See Comp. Exh. 2.09.

²¹ See Resp. Exh. H; see also Comp. Exh. 2.11.

²² See Comp. Exh. 3.14.

1 30. No special or emergency meeting occurred. At the annual meeting on
2 September 19, 2024, Respondent provided Petitioner an opportunity to bring up any
3 issues he wanted to discuss, and he declined to bring up any issues.²³

4 **COMPLAINT NUMBER 3:**

5 Failure to Uphold CCRs Regarding Common Wall Repairs: The HOA violated CCRs,
6 Section 4.04, Bylaws, Article IV, Section 3, and A.R.S. § 33-1803(A) by refusing to
7 repair a jointly owned common wall damaged by an HOA-sanctioned electrician and
8 failing to reimburse George Wolchko for subsequent repairs.

9 31. At the February 28, 2019, Board Meeting, the Board determined that the
10 pool-facing wall of Building 4 was a true common area.²⁴ Accordingly, it was a “shared
11 expense of 50/50 between the Association and the building homeowner as a result.
12 This 1-singular wall shall be provided with both Maintenance and Paint as needed to
13 exclude Catastrophic Loss as this would fall underneath the individual building
14 homeowner’s Property Insurance.”²⁵

15 32. On February 24, 2024, Petitioner requested that two woodpecker-caused
16 holes in the common wall be repaired.²⁶

17 33. On or around February 19, 2024, Blue State Electric performed the
18 following service: “Repair broken conduit on side of building 4” and “[f]urnished and
19 installed new junction box on wall and new ground junction box.”²⁷

20 34. On March 15, 2024, Petitioner notified Respondent that the election did
21 not properly restore the wall, leaving a hole in the wall with foam that was not a water
22 tight seal.²⁸ Respondent stated that the electrician reduced the size of the box, and
23 argued that the foam was preexisting and therefore not the responsibility of the
24 Association or the electrician.²⁹

25 ²³ See Resp. Exh. M.

26 ²⁴ See Comp. Exh. 3.01.

27 ²⁵ See *id.*

28 ²⁶ See Comp. Exh. 3.02.

29 ²⁷ See Resp. Exh. I.

30 ²⁸ See Comp. Exh. 3.04.

31 ²⁹ See *id.*

35. Petitioner wanted to coordinate repairing the work as of March 15, 2024.³⁰ He asked several times for the Board to schedule an electrician to disconnect the electricity to the conduit on his wall, so that he could repair the wall.³¹

36. On March 20, 2024, Mr. Kidd stated “[s]omeone long before that electrical work was done last Friday made the decision to apply foam to that area and cover it with a 2-gang electrical box. If the electrician used the same size box and didn’t reduce it to a single gang with a single conduit to save us money, you would have never noticed it and it would have provided the same protection it has been for years.”³²

37. As of July 22, 2024, no action had been taken toward the hole in the wall, and Petitioner investigated it.³³

38. Kachina had another contractor examine the previously done work and provide a quote for corrections.³⁴ The contractor determined that the previous electrician did not complete the work correctly.³⁵

COMPLAINT NUMBER 4:

Violations of HOA Elections Procedures and Community Documents: The HOA violated A.R.S. § 33-1804(A), A.R.S. § 33-1805, Article of Incorporation, Article VI, Bylaws, Article IV, Section 1, and CCRs, Article V, Section 5.03 by inconsistently applying standards, allowing a candidate to serve and vote despite unpaid fines while invalidating George Wolchko’s vote over a disputed \$9.90 charge, and failing to seat the required number of board members.

39. On September 19, 2024, an election was held for Respondent’s Board and the annual meeting was held.³⁶

40. Joseph Kidd, Michael Mott and Chris Jones won seats on the Board.³⁷

41. Prior to October 2024, Chris Jones resigned from the Board.³⁸

³⁰ See *id.*

³¹ See *e.g. id.*

³² See Comp. Exh. 3.07.

³³ See Comp. Exh. 3.15.

³⁴ See Resp. Exh. J; see *also* Comp. Exh. 3.22.

³⁵ See *id.*

³⁶ See Resp. Exh. M.

³⁷ See *id.*

³⁸ See Resp. Exh. G.

1 42. Kachina informed the Board that it could choose whether or not to fill the
2 vacant seat.³⁹

3 43. As of the hearing date, the Board had not filled the third seat.⁴⁰

4 **CONCLUSIONS OF LAW**

5 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
6 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned
7 community documents.” Pursuant to the Department of Real Estate process, this
8 Tribunal is not authorized to adjudicate complaints arising from other laws or
9 regulations, including compliance with A.R.S. § 10-11601.

10 2. A.R.S. § 32-2199.01 permits a member of a planned community to file a
11 petition with the Department for a hearing concerning the planned community
12 association’s alleged violations as set forth in Title 33, Chapter 16. This matter lies
13 within the Department’s jurisdiction. That statute provides that such petitions will be
14 heard before the Office of Administrative Hearings.

15 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
16 party to abide by the statute, condominium documents, community documents or
17 contract provision at issue and may levy a civil penalty on the basis of each violation.”
18 This Tribunal is not authorized to order other remediation or order civil penalties for
19 other conduct.

20 4. Petitioners bear the burden of proof to establish that Respondent violated
21 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.⁴¹
22 Respondent bears the burden to establish affirmative defenses by the same evidentiary
23 standard.⁴²

24 _____
25 ³⁹ See *id.*

26 ⁴⁰ See Kidd Testimony.

27 ⁴¹ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴² See A.A.C. R2-19-119(B)(2).

5. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁴³

COMPLAINT NUMBER 1:

Violation of AZ Law on Delivery of Community Documents: The HOA violated A.R.S. § 33-1805, A.R.S. § 10-11601(A), Bylaws, Article X, and CCRs, Article IX, Section 9.07 by failing to provide the Kachina Management contract, despite numerous requests and legal obligations to make such records available.

1. A.R.S. § 33-1805 provides an association “ten business days to fulfill a request for examination” or “to provide copies of the requested records.”

2. Petitioner first requested a copy of the Kachina contract on May 6, 2024.

3. Respondent, through Kachina, made the documents available for examination on June 3, 2024.

4. More than ten business days passed between May 6, 2024, and June 3, 2024.

5. Petitioner demonstrated by a preponderance of the evidence that Respondent, through Kachina, failed to comply with A.R.S. § 33-1805.

COMPLAINT NUMBER 2:

Failure to Hold a Special HOA Meeting: The HOA violated A.R.S. § 33-1804(A), Bylaws, Article III, Section 4, and CCRs, Article V by failing to hold a special meeting requested by a valid petition submitted by George Wolchko and Terrance Greer, signed by 25% of members.

6. Article III, Section 4 of Respondent's Bylaws allow members to call a special meeting if a petition, signed by 25% of the votes of the association, requests a meeting, stating the date, hour, place of the meeting, and topic for discussion.

7. Petitioner submitted a request for an “emergency meeting” that was signed by 25% of the votes and named a date and hour for the meeting. The petition did not include a place for the meeting, the topic to be discussed, or the phrase “special meeting.”

⁴³ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

8. In the context of the communications about this meeting, it is clear that Petitioner was requesting a “special meeting” not an “emergency meeting,” which can only be called by the Board.

9. Petitioner's special meeting request did not fully comply with the requirements of the Bylaws. Although it is a mere technicality, it is sufficient to deem the petition for a special meeting ineffective. Accordingly, Petitioner failed to demonstrate a violation by Respondent by a preponderance of the evidence.

COMPLAINT NUMBER 3:

Failure to Uphold CCRs Regarding Common Wall Repairs: The HOA violated CCRs, Section 4.04, Bylaws, Article IV, Section 3, and A.R.S. § 33-1803(A) by refusing to repair a jointly owned common wall damaged by an HOA-sanctioned electrician and failing to reimburse George Wolchko for subsequent repairs.

10. Article IV, Section 3 of Respondent's Bylaws requires the Board to care and upkeep Common Elements. The CC&R Section 4.05(2) address repair and maintenance by the association. It stated as follows:

The Association shall have the full power and control, and it shall be its duty to maintain, repair and make necessary improvements to and pay for out of the maintenance fund to be provided, all Common Areas and the improvements thereon, including, but not limited to, common facilities and improvements . . . [including] all metered utilities for the Common Area . . . walks, and other means of ingress and egress within the property. The Association shall further be empowered with the right and duty to periodically inspect all the Common Areas in order that minimum standards of repair, design, color and landscaping shall be maintained for beauty, harmony and conservation within the entire Property.

11. The Board identified an issue with the electrical conduit on Building 4, and it hired an electrician to correct the issue. The preponderance of the evidence supports that the Board-hired electrician installed the wrong kind of box and left a section of the wall exposed without proper weather proofing.

12. The electrical conduit was on a wall that the Board designated as a Common Element. Additionally, the electrical conduit carried electricity for Common Areas including the exterior lighting for several buildings.

1 13. The Board declined to correct the problem its contractor caused.

2 14. The preponderance of the evidence supports that the Board had an
3 obligation to maintain this area in good repair because it was a Common Element, by
4 designation of the Board, and a Common Area, carrying common metered utilities. The
5 preponderance of the evidence supports that the Board failed to maintain this area in
6 good repair in violation of the Bylaws and CC&R.

7 **COMPLAINT NUMBER 4:**

8 Violations of HOA Elections Procedures and Community Documents: The HOA violated
9 A.R.S. § 33-1804(A), A.R.S. § 33-1805, Article of Incorporation, Article VI, Bylaws,
10 Article IV, Section 1, and CCRs, Article V, Section 5.03 by inconsistently applying
standards, allowing a candidate to serve and vote despite unpaid fines while invalidating
George Wolchko's vote over a disputed \$9.90 charge, and failing to seat the required
number of board members.

11 15. Article IV, section 1 of the Bylaws require a Board of no fewer than three
12 people. The preponderance of the evidence established that the Board has consisted
13 of two people for some time.

14 16. Respondent argued that Section 5, Vacancies does not require the Board
15 to fill a vacant position:

16 Any vacancy occurring in the Board of Directors may be filled by the
17 affirmative vote of a majority of the remaining directors, though less than a
18 quorum or by a sole remaining director, and any director so chosen shall
serve as a director for the remainder of the term of such the prior director's
vacancy.

19 This argument was not persuasive. This provision allows for the appointment,
20 rather than the election, of a Director to a vacant seat. It does not absolve the
21 Board from having the minimum number of Directors.

22 17. The preponderance of the evidence supports that Respondent violated the
23 Bylaws by not having enough Board members.
24
25
26
27

ORDER

IT IS ORDERED that Petitioners be deemed the prevailing party in this matter regarding Petition Issues 1, 3, and 4.

IT IS ORDERED that Respondent be deemed the prevailing party in this matter regarding Petition Issue 2.

IT IS ORDERED that Respondent pay Petitioners the filing fee of \$1,500.00, to be paid directly to Petitioners within thirty (30) days of this Order.

IT IS ORDERED Respondent is directed to comply with the requirements of its Community Documents going forward.

A Civil Penalty of \$150.00 is found to be appropriate in this matter.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, May 5, 2025.

/s/ Samuel Fox
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

Susan Nicolson, Commissioner
Arizona Department of Real Estate

George Wolchko
dwolchko@gmail.com

Benjamin L. Gottlieb
GOTTLIEB LAW, PLC
benjamin@gottliebblawaz.com
amy@gottliebblawaz.com
joshua@gottliebblawaz.com
Chris@gottliebblawaz.com
KarenF@gottliebblawaz.com

Kachina Management
Victoria Manor Mgt.
frontdesk@kachinamanagement.com

By: OAH Staff