

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Sharon Maiden

No. 25F-H030-REL

4 Petitioner,
5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Val Vista Lakes Community Association
7
8 Respondent.

9 **HEARING:** March 26, 2025 and April 11, 2025, with the record held open until
10 May 13, 2025, for the sole purpose of receiving post hearing briefs.

11 **APPEARANCES:** Sharon Maiden (hereinafter "Petitioner") appeared on behalf of
12 herself. Josh Bolen, Esq. appeared on behalf of Val Vista Lakes Community Association
13 (hereinafter "Respondent").

14 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

15 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner's Exhibits 1 through 20 and
16 A through G. Respondent's Exhibits 1 through 24.

17
18 **FINDINGS OF FACT**

19 1. The Arizona Department of Real Estate (hereinafter "the Department") is
20 authorized by statute to receive and to decide Petitions for Hearings from members of
21 homeowners' associations and from homeowners' associations in Arizona.

22 2. Respondent is a homeowners' association whose members own property
23 and/or residences in the Val Vista Lakes development in Gilbert, Arizona.

24 3. Petitioner owns property in Val Vista Lakes and is a member of Respondent.

25 4. On or about December 15, 2024, Petitioner filed a petition with the
26 Department alleging that Respondent (1) selectively enforced the Bylaws, in violation of
27 Article IV, Sections 2 and 3, of the Association's Bylaws, and (2) failed to hold an open
28 meeting when it decided to disqualify Petitioner from running for the Board, in violation
29 of Arizona Revised Statutes (hereinafter "A.R.S.") § 33-1804(A).

30 5. Respondent filed a written answer to the petition, denying that it had

1 violated any statute or bylaw. The Department referred the petition to the Office of
2 Administrative Hearings (hereinafter "OAH"), an independent state agency, for an
3 evidentiary hearing.

4 6. A hearing was held on March 26, 2025 and April 11, 2025. Petitioner
5 presented the testimony of Bill Sutell and Douglas Keats.¹ Respondent presented the
6 testimony of Jill Brown and Respondent's President, Bryan Patterson.

7 7. Article IV of Respondent's Bylaws concerns the Board of Directors and
8 provides as follows:²

9

10 Section 2. Term of Office. The Directors shall serve
11 two-year staggered terms. At each Annual Meeting, the
12 Members shall elect Directors to replace those Directors
13 whose terms have expired. The Board shall have the right to
14 cause a Director to be elected for less than a two (2) year
15 term if it becomes necessary to re-establish the staggered
16 terms (The elected Directors receiving the highest votes
17 shall serve the longer terms). If the new directorships are
18 created and filled by the Board of Directors between Annual
19 Meetings, the newly seated Directors shall serve until the
20 next Annual Meeting of the Members. Commencing with the
21 first Annual Meeting after the adoption of these Amended
22 and Restated Bylaws, Directors will be subject to term limits
23 as follows. After serving two consecutive elected two year
24 terms, a Director shall be required to take a two year break
25 from serving on the Board, unless there are no other
26 candidates willing to run for office. For purposes of this
27 section, "term" will only refer to an elected term, not an
28 appointed term.

29 Section 3. Nomination. Nomination for election to the
30 Board of Directors shall be made by a call for candidates
delivered to all Members at least ninety (90) days in advance
of the Annual Meeting of the Members. In no event shall
nominations be made from the floor of the Annual Meeting.
Each candidate for the Board of Directors must be a Member

¹ The Administrative Law Judge has read and considered each page of each admitted exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision.

² See Petitioner's Exhibit 2.

of the Association. Each candidate for the Board of Directors shall fill out an application which at minimum will require the candidate to disclose any familial, business or ownership relationships with other Directors or candidates; any current or anticipated conflicts of interest with the Association, including whether the candidate is current in assessments and/or otherwise in violation of the Declaration or Rules; and whether they have previously served on the Board. The application shall be made available to all Association Members prior to the election.

.....

8. Petitioner has served on Respondent's Board for two terms of two years each.³ Respondent's Bylaws were amended in 2021 and changed the limit that an individual could serve on the board from three to two terms. Respondent determined that pursuant to Article IV, Section 2 of the Bylaws, Petitioner could not run for a Board position in 2024 because she would have reached the two-year term limit by the end of 2024.

9. Jill Brown served on Respondent's Bylaw Committee in 2021. During that time, the Bylaw Committee recommended that Article IV, Section 2 of the Bylaws be amended to decrease the limit that an individual could serve on the board from three years to two years. There was no discussion among the Bylaw Committee about "grandfathering" any Directors, such that the two-year term limits would not apply to then-serving Directors.

10. Bill Sutell also served on Respondent's Bylaw Committee during in 2021. Mr. Sutell opined that Article IV, Section 2 does not consider the terms that a candidate for the Board served before the effective date of the 2021 amendment. Mr. Sutell asserted that because the 2021 amendment was not effective until the first board meeting of 2022, Petitioner's prior service on the Board did not apply and she was eligible to run for the Board in 2024.

11. Mr. Sutell and Ms. Brown testified at hearing that the 2021 amendment reducing the term limit was proposed to prevent Board members from serving for long

³ It is undisputed that Petitioner was elected to the Board in 2020 and 2022.

1 periods of time. Mr. Sutell, Mr. Keats, and Petitioner all admitted that the interpretation
2 they are asking this Court to adopt would have allowed the then-sitting Board Members
3 the right to serve 6, 8, and potentially 10-year term limits.

4 12. During an executive session on October 11, 2024, the Board discussed legal
5 opinions regarding Article IV, Section 2 of Respondent's Bylaws in an executive
6 session. Petitioner was a member of the Board at the time of the meeting and did not
7 object to the Board voting on whether Article IV, Section 2 of Respondent's Bylaws
8 permitted Petitioner to run for the board in 2024.

9 13. At hearing, Petitioner contended that the 2021 Amendment of Article IV,
10 Section 2 of the Bylaws does not bar individuals from running for the Board who served
11 two consecutive terms prior to the effective date of the amendment. Petitioner
12 contended that she should have been allowed to run for a third term in 2024. Petitioner
13 argued that after the term limits were decreased in 2012, the amendment applied
14 prospectively.

15 14. A.R.S. § 33-1804 provides, in relevant part, as follows:

16 A. Notwithstanding any provision in the declaration, bylaws or other
17 documents to the contrary, all meetings of the members' association and
18 the board of directors, and any regularly scheduled committee meetings,
19 are open to all members of the association or any person designated by a
20 member in writing as the member's representative and all members or
21 designated representatives so desiring shall be allowed to attend and
22 speak at an appropriate time during the deliberations and proceedings.
23 The board may place reasonable time restrictions on those persons
24 speaking during the meeting but shall allow a member or member's
25 designated representative to speak once after the board has discussed a
26 specific agenda item but before the board takes formal action on that item
27 in addition to any other opportunities to speak. The board shall provide for
28 a reasonable number of persons to speak on each side of an issue.
29 Persons attending may audiotape or videotape those portions of the
30 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

1 restrictions on their use as evidence in any dispute resolution process.
2 Any portion of a meeting may be closed only if that closed portion of the
3 meeting is limited to consideration of one or more of the following:

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

10 **CONCLUSIONS OF LAW**

11 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
12 to file a petition with the Department for a hearing concerning violations of Title 33,
13 Chapter 16. This matter lies with the Department's jurisdiction.

14 2. Petitioner bears the burden of proof to establish that Respondent violated
15 A.R.S. § 33-1804(A) and Article IV, Sections 2 and 3 of the Association's Bylaws, by a
16 preponderance of the evidence.⁴ Respondent bears the burden to establish affirmative
17 defenses by the same evidentiary standard.⁵

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

25 4. In Arizona, when construing statutes,

26 We look first to a statute's language as the best and most
27 reliable index of its meaning. If the statute's language is clear
28 and unambiguous, we give effect to that language and apply
29 it without using other means of statutory construction, unless
30

⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁷ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 applying the literal language would lead to an absurd result.
2 Words should be given "their natural, obvious, and ordinary
3 meaning."⁸

4 Under A.R.S. § 33-1804(A)(1), a board meeting may be closed to consider legal advice
5 from an attorney. Furthermore, on final resolution of the matter, the Board is permitted,
6 but not required, to disclose information about that matter in an open meeting. The
7 evidence presented at hearing shows that the board met in executive session to
8 consider a legal opinion regarding the 2021 Amendment to Article IV, Section 2 of the
9 Bylaws. Furthermore, the Board determined that Petitioner was not allowed to run for
10 the Board in 2024 under Article IV, Section 2 of the Bylaws. Petitioner failed to establish
11 by a preponderance of the evidence that Respondent violated A.R.S. § 33-1804(A).

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

16 6. Upon consideration of the evidence presented at hearing, the Administrative
17 Law Judge concludes that Petitioner has failed to meet her burden of establishing by a
18 preponderance of the evidence that Respondent violated Article IV, Sections 2 and 3 of
19 the Bylaws when it precluded Petitioner from running for the Board after she served two
20 terms of two years each on the Board. The preponderance of the evidence presented at
21 hearing shows that the purpose of the 2021 amendment was to prevent Board members
22 for serving on the Board for long periods of time. The issue of selective enforcement is
23 not within the jurisdiction of the tribunal.

24 **ORDER**

25 **IT IS ORDERED** that Petitioners' petition is denied because she has not
26 established that Respondent's Board violated A.R.S. § 33-1804 or Article IV, Sections 2
27 and 3 of the Bylaws.

28 ⁸ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

29 ⁹ *See Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

30 ¹⁰ *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).

NOTICE

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

Done this day, June 2, 2025.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile June 2, 2025 to:

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