

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

No. 25F-H043-REL

ADMINISTRATIVE LAW JUDGE DECISION

V.

Respondent.

APPEARANCES: Keith A. Shadden (hereinafter “Complainant”) appeared on behalf self. Emily Cooper, Esq. appeared on behalf of Las Brisas Community Association (hereinafter “Respondent”).

EXHIBITS ADMITTED INTO EVIDENCE: Petitioner's Exhibits A through Q.
Respondent's Exhibits A through H; J, N, P, R, and U.

1. The Arizona Department of Real Estate (hereinafter “the Department”) is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners’ associations and from homeowners’ associations in Arizona. Homeowners’ associations and their members are governed by the Chapter 16 of Title 33, the Planned Communities Act, A.R.S. §§ 33-1801 to 33-1818 (hereinafter “the Act”).

3. Petitioner owns Lot #1-175 in Las Brisas and is a member of Respondent.

Petitioner that provided in relevant part, as follows:

1

.....

It was observed during a recent inspection of the community on 8/19/2024 that your property has reflective material covering your windows. No reflective material, including, but not limited to, aluminum foil, reflective screen or glass, mirror or similar type items, shall be installed or placed upon the outside or inside of any windows.

This condition is in violation of the Association governing documents, including but not limited to **Section 5.10 “Windows” of Article 5 “USE RESTRICTIONS” ON PAGE 19 OF THE Covenants, Conditions and Restrictions, Section “SECURITY DOORS, SCREEN DOORS AND SUNSCREENS” OF section “design guidelines” ON PAGES 8-9 OF THE Association Rules and Design Guidelines, Section “windows” of t Section “DESIGN GUIDELINES” on page 10 of the Association Rules and Design Guidelines.**

.....

[Exhibit C.]

5. On March 14, 2025, Petitioner filed a single-issue petition alleging that Respondent was using incorrect sections of Respondents Covenant, Conditions, and Restrictions (hereinafter “CC&Rs”) for a violation regarding garage door cut outs.

6. Through the petition, Petitioner alleged that Respondent misapplied Section 5.10 of the CC&Rs that applies to windows when it issued a violation regarding reflective tint installed on the glass cutouts of his garage door. See Exhibit C.

7. The petition was referred to the Office of Administrative Hearings for an evidentiary hearing.

8. A hearing was held on June 16, 2025. At hearing, Petitioner testified on behalf of himself. Jamie Cryblskey, Respondent’s community manager, testified on behalf of Respondent.

9. It was undisputed that there are glass door cut outs on Petitioner’s garage door. Petitioner admitted during hearing that a person can see through the glass door cut outs. Petitioner stated at hearing that he and his wife paid Taylor Morrison, the Declarant, to place window treatments on the home. Petitioner contended that because

1 Taylor Morrison did not place window treatment on the garage door cut outs, Taylor
2 Morrison did intend for Section 5.10 of the CC&Rs to apply to garage doors.

3 **Referenced Authorities**

4 10. Article 5.10 of Respondent's CC&Rs concerns windows and provides:

5 Within ninety (90) days of occupancy of a Residential Unit each Owner shall
6 install permanent suitable window treatments that are Visible from Neighboring
7 Property. No reflective materials, including, but without limitation, aluminum
8 foil, reflective screens or glass, mirrors or similar type items, shall be installed or
9 placed upon the outside or inside of any windows.

10 11. Article 5.12 of Respondent's CC&Rs concerns Garages and Driveways
11 and provides:

12 The interior of all garages situated on any lot shall be maintained in a neat and
13 clean condition. Garages shall be used only for the parking of Vehicles and the
14 storage of normal household supplies and materials and shall not be used for or
15 converted to living quarters or recreational activities after the initial construction
16 thereof without the prior written approval of the Architectural Committee. Garage
17 doors shall be left open only as needed for ingress and egress.

18 **CONCLUSIONS OF LAW**

19 1. Arizona Revised Statute (hereinafter "A.R.S.") § 32-2199(B) permits an owner
20 or a planned community organization to file a petition with the Department for a hearing
21 concerning violations of planned community documents under the authority Title 33,
22 Chapter 16.¹ Such petitions will be heard before the Office of Administrative Hearings,
23 an independent state agency.

24 2. Petitioner bears the burden of proof to establish that Respondent violated its
25 CC&Rs by a preponderance of the evidence.² Respondent bears the burden to establish
26 affirmative defenses by the same evidentiary standard.³

27 ¹ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
28 the development's CC&Rs.

29 ² 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
30 Ariz. 369, 372, 249 P.2d 837 (1952).

³ See A.A.C. R2-19-119(B)(2).

1 3. "A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not."⁴ A preponderance of the evidence is
3 "[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
7 than the other."⁵

8 4. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give
9 effect to the intent of the parties. "Restrictive covenants must be construed as a whole
10 and interpreted in view of their underlying purposes, giving effect to all provisions
11 contained therein."⁶

12 5. In this case, the plain meaning of the word "window" in Section 5.10 is any
13 transparent opening through which light passes. The CC&Rs do not define the word
14 "window." Petitioner contended that Section 5.10 does not apply to garages. However,
15 Section 5.10 of Respondent's CC&Rs does not exclude garages.

16 6. Petitioner has failed to meet its burden to establish that Respondent used
17 incorrect sections of the CC&Rs when it issued its VIOLATION NOTICE. Because
18 Petitioner has not established by a preponderance of the evidence that Respondent
19 violated its CC&Rs, their petition must be dismissed.

20 **RECOMMENDED ORDER**

21 **IT IS ORDERED** that Keith A. Shadden's petition against Respondent Las Brisas
22 Community Association is dismissed.

23 **NOTICE**

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

29 ⁴ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 ⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁶ *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).

1 Done this day, July 7, 2025.

2 /s/ Velva Moses-Thompson
3 Administrative Law Judge
4

5 Transmitted by either mail, e-mail, or facsimile July 7, 2025 to:

6 Susan Nicolson
7 Commissioner
8 Arizona Department of Real Estate

9 Shadden, Keith A
10 keith.shadden@park.edu

11 Emily Cooper, Esq.
12 Emily.Cooper@chdblaw.com

13 Las Brisas Community Association
14 jaime.cryblskey@cityproperty.com
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30