Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: Michael D. Ludden, **Petitioner**, v. Mountain Gate Homeowners Association, **Respondent**.	No. 25F-H051-REL **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: September 3, 2025 at 1:00pm

APPEARANCES: Petitioner Michael Ludden on his own behalf with witness Brenda Anderson. Jim Pieper on behalf of Respondent Mountain Gate Homeowners Association with witness Pablo Martinez.

ADMINISTRATIVE LAW JUDGE: Nicole Robinson

EXHIBITS ADMITTED INTO EVIDENCE: Arizona Department of Real Estate's Electric File. Respondent Exhibit – OAH PowerPoint.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Arizona Department of Real Estate ("Department") is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

2. On or about February 28, 2025, Michael D. Ludden ("Petitioner") filed a one issue petition with the Department against Mountain Gate Homeowners Association ("Respondent").[1] Petitioner alleged a violation of the Covenants, Conditions, and

[1] *See* AZDRE Petition Form Signed 2-28-25.

Restrictions ("CC&Rs") Article 1, Definitions, Area of Association Responsibility as follows:

> *Areas of Association Responsibility – Association responsibility for roof replacement by the association not clearly specified as to whether or not it's an association or homeowner responsibility*.[2]

3. The relief requested by Petitioner, other than ordering Respondent to pay to Petitioner the filing fee required by ARIZ. REV. STAT. § 32-2199.01 if Petitioner prevailed, includes the following: Order a party to abide by the section(s) of the condominium/planned community document(s) specified.[3]

4. On April 23, 2025, the Department sent a Homeowner's Association ("HOA" or "Association") Notice of Petition to Respondent informing Respondent of the petition initiated against it. In addition, the Notice of Petition requested that Respondent send a timely response to the Department and to Petitioner no later than May 13, 2025.[4]

5. On or about April 29, 2025, Respondent returned its ANSWER to the Department whereby it denied Petitioner's claims.[5]

6. On or about May 19, 2025, the Department referred this matter to the Office of Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing.[6]

THE PARTIES AND GOVERNING DOCUMENTS

7. Respondent is a planned community association whose members own properties in Mountain Gate homes, a residential real estate development located in Lakeside, Navajo County, Arizona. The community consists of 42 townhome units and is self-managed.

8. Petitioner is a property owner and the President of the Association**.**

9. The governing documents include the CC&Rs.

10. The CC&Rs provide, in pertinent part, these sections:

Article 1 – Definitions: "Areas of Association Responsibility" means

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[2] *Id*.
[3] *Id*.
[4] *See* Notice of Petition.
[5] *See* 0759_001 (Attention Respondent).
[6] *See* OAH Request for Hearing 5.19.25.

(a) all Common Areas;
(b) all landscaping located between the back of the curb and the sidewalk along public rights-of-way adjacent to Common Areas unless responsibility for such areas is accepted by the City;
(c) all signage within medians located in public rights-of-way within the Project unless responsibility for such areas is accepted by the City;
(d) all cluster mailbox units for the Project; and
(e) all land, and the improvements thereon, which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded instrument executed by Declarant or the Association. Notwithstanding anything to the contrary set forth in this Declaration, the Areas of Association Responsibility shall include the maintenance and repair of: all exterior walls and the roof of any Dwelling Unit (as defined below); and patio or deck attached to a Dwelling Unit; and plumbing located on the outside of a Dwelling Unit. The Areas of Association Responsibility shall not include and Owners shall be solely responsible for the maintenance and repair of any windows, doors, interior plumbing and HVAC for a Dwelling Unit.

Improvements means ". . . any building, wall or structure . . . ."

Article 5

5.18 Dwelling Unit Insurance. Each Owner of a Lot or Dwelling Unit shall be responsible to provide liability and comprehensive coverage insurance for the Lot and full replacement cost of the Dwelling Unit, naming the Owner as the insured with the Owner's lender and the Association named as additional insureds. All other provisions of such insurance coverage shall be maintained at the Owner's discretion. In the case of a loss, and if any insurance proceeds are payable to the Association, the Association shall hold such proceeds in trust for the reconstruction or repair of damage in the Dwelling Unit.

Article 11 – Maintenance: 11.1 Areas of Association Responsibility.

11.1.1 Areas of Association Responsibility. The Association, or its duly designated representative, shall maintain manage and control the Areas of Association Responsibility and shall keep the Areas of Association Responsibility in good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. The Association's costs of doing so shall be Common Expenses of the Association.

11.1.2 Delegation of Responsibilities. The Board shall have the sole discretion to determine whether the Association or an individual Owner

should be responsible for maintenance of certain Common Areas or other Areas of Association Responsibility considering cost, uniformity of appearance, location and other relevant factors.

11.1.3 Standard of Care; Disclaimer of Liability. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Areas of Association Responsibility so that the Project will reflect a high degree of pride of ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Areas of Association Responsibility by the Association. Notwithstanding any duty the Association may have to maintain and repair the Areas of Association Responsibility, the Association and Declarant shall not be liable for any injury or damage caused by a latent condition or by any Member, Owner, Occupant or other Person. Neither the Association nor Declarant shall be liable to any Person for any claim, injury or damage arising from the use of the Areas of Association Responsibility, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage or repair the Areas of Association Responsibility.[7]

HEARING EVIDENCE

11. Petitioner testified on his own behalf and presented the testimony of the Association Secretary-Treasurer, Brenda Anderson. Respondent presented the testimony of Jim Pieper and Pablo Martinez who both serve as Association Directors-at-Large. Administrative notice was taken of the Department's electronic file and NOTICE OF HEARING. The substantive evidence of record is as follows:

a. In 2006, the Association incorporated and was first established as a condominium association.
b. In 2007, infrastructure and residential units began on 12 units.
c. In 2010, re-platted from condominiums to townhomes with an amendment to the CC&Rs section 5.18, Dwelling Unit Insurance which required the individual homeowner to obtain comprehensive insurance on their unit.
d. In 2014, Petitioner purchased Lot 33 from sales agent, Gary Laframboise. Mr. Laframboise informed Petitioner at the time of purchase that the exterior and roofs were a part of the Areas of Association Responsibility.
e. In 2016, the development was sold to Maebee Mountaingate LLC.

[7] *See* Respondent Exhibit – OAH PowerPoint at pdf pages 5-6, 10.

f. From 2016 to 2022, Maebee Mountaingate developed and built the final 32 units.
g. In or about 2018, Maebee Mountaingate had community sales brochures with the header "Mountain Gate offers value and peace of mind versus an older existing home."[8] The number one value stated, "1. Roofs last 20 years, replacement can cost $9500. In Mountain Gate part of your homeowner's dues will be there to replace your roof if it is needed."[9]
h. In 2022, the HOA was turned over to homeowner control with a zero balance in the Association's reserve fund.
i. In 2024, an owner demanded that the Association replace his roof.
j. On October 8, 2024, Petitioner reached out to Mr. Laframboise to ask about responsibility for roof maintenance and replacement. Mr. Laframboise responded, "Original homes built 2005 to 2008, roof maintenance and replacement is HOA responsibility."[10]
k. In 2024, the HOA seeks guidance from attorneys on whether or not roof replacement is an Area of Association Responsibility.[11]
l. On February 28, 2025, the HOA and Petitioner moved forward to file Petition to seek clarity from the OAH.

ARGUMENTS

Petitioner's argument

12. Petitioner and Ms. Anderson argued that the Association was responsible for not only the maintenance and repair of the Areas of Association Responsibility but also to replace these areas, in particular – the roof, if needed. They testified that many homeowners were informed in sales documents and through verbal communications while buying their units that roof replacement was covered by the HOA. Petitioner further testified that because he believed that the Association was responsible for replacing homeowners' roofs, if needed, then the Association should control the quality and timing of such replacement.

Respondent's argument

[8] *See* Respondent Exhibit – OAH PowerPoint at pdf page 8.
[9] *Id*.
[10] *See* Respondent Exhibit – OAH PowerPoint at pdf page 9.
[11] *See* Respondent Exhibit – OAH PowerPoint at pdf pages 13-15.

13. Mr. Pieper and Mr. Martinez asserted that because the word replacement was not specifically stated in connection with roof maintenance and repair in the CC&Rs, Article 1, then it was not the Association's responsibility. In fact, they believed that the roof should be listed in the CC&Rs, as an item that was the sole responsibility of the individual homeowner. They argued that making the HOA responsible for replacing homeowner roofs would lower the resale value of their units because the HOA dues would need to be raised. The dues were at $3,300.00 a year at the time of the hearing and that was with no community amenities. In addition, Mr. Pieper stressed that the 2010 CC&Rs amendment to require individual homeowners to provide for their own comprehensive insurance policy on their units would make the homeowner responsible to make their own claim with their insurer on any replacement of their roof.

CONCLUSIONS OF LAW

1. The Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 *et seq*., regarding a dispute between an owner and a planned community association. The owner or association may petition the department for a hearing concerning violations of community documents or violations of the statutes that regulate planned communities as long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 *et seq*., OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.[12]

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent's CC&Rs cover not only the maintenance and repair of homeowners' roofs, but also, the replacement of roofs, if needed.[13]

[12] See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).
[13] *See* ARIZ. ADMIN. CODE R2-19-119.

4. A preponderance of the evidence means "proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence."[14]

5. In Article 1 of the CC&Rs definition for Areas of Association Responsibility states in part "all land, and the Improvements thereon, which the Association is obligated to **maintain**, **repair** and **replace** pursuant to the terms of this Declaration . . . ."[15] Due to the CC&Rs defining Improvements to mean, "[a]ny building, wall or structure," an argument can be made that the roof is an improvement.

6. In this case, although the CC&Rs in 5.18 Dwelling Unit Insurance were amended in 2010 to require individual homeowners to carry comprehensive insurance on their unit, the evidence established that this fact still does not relieve the HOA from repairing and maintaining the roof.

7. This Administrative Law Judge primarily relied on the CC&Rs definition of the "Areas of Association Responsibility," to determine whether the HOA was responsible to repair a homeowner's roof, if needed. The definition of "Areas of Association Responsibility," states in pertinent part that the definition "[*s*]*hall not include and Owners shall be solely responsible for the* ***maintenance*** *and* ***repair*** *of any windows, doors, interior plumbing and HVAC for a Dwelling Unit*."[16]

8. Take for a moment the hypothetical scenario in which a rock went through a homeowner's window and created a hand-sized hole in the window. The homeowner has two expert contractors provide an estimate and those contractors advised the homeowner that the window pane should not be repaired but replaced. On that advice, the homeowner would more than likely choose to replace the window. However, the homeowner could not seek relief from the HOA to replace the window, because "windows" are the sole responsibility of the homeowner per Article 1 of the CC&Rs. Even though, this part of Article 1 in the CC&Rs only states **maintenance** and **repair** and not the word **replace**. As such, just because the word **replace** is not written in the

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[14] *In re William L*., 211 Ariz. 236, 238 (App. 2005) (quoting *Matter of Appeal in Maricopa Juv. Action No. J-84984*. 138 Ariz. 282, 283 (1983)).
[15] *See* Respondent Exhibit – OAH PowerPoint at pdf pages 5-6, 10
[16] *Id.*

section of Article 1 that states in relevant part, "[t]he Areas of Association Responsibility shall include the **maintenance** and **repair** of: all exterior walls and the roof of any Dwelling Unit . . .,"[17] does not relieve the HOA's responsibility for the roof and this responsibility is not conditioned upon the homeowner providing proof of insurance. In fact, the Merriam-Webster dictionary defines "repair" as "*to restore by **replacing** a part or putting together what is torn or broken."*[18] Hence, a repair could come through replacement.

9. Lastly, there is an argument on the developer's promises and marketing tools informed new buyers that a roof replacement, if needed, would be the responsibility of the HOA.

10. Therefore, Petitioner has sustained his burden and established that the HOA CC&Rs provide that the Association is responsible for replacing individual homeowners' roofs, if needed. As such, Petitioner's petition must be granted.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition be **GRANTED**.

IT IS FURTHER ORDERED that Respondent reimburse Petitioner's filing fee of $500.00 in certified funds.

IT IS FURTHER ORDERED that Respondent shall henceforth comply with the provisions of the governing documents.

NOTICE

Pursuant to Ariz. Rev. Stat. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to Ariz. Rev. Stat. § 32-2199.04. Pursuant to Ariz. Rev. Stat. § 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, September 23, 2025.

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[17] *Id.*

[18] https://www.merriam-webster.com/dictionary/repair

/s/ Nicole Robinson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile September 23, 2025 to:

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