

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Barry Saxion
4 Petitioner,

No. 17F-H1716023-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Silverton II Homeowners Association, Inc.
7 Respondent

8
9 Pending before the Office of Administrative Hearings is Respondent Silverton II
10 Homeowners Association, Inc.'s Motion for Summary Judgement (Motion).

11 Initially, Respondent argued that Barry Saxion did not own property within the
12 Association, and therefore, did not possess standing to pursue this action. Barry Saxion
13 did not dispute that he does not own property within the Association. A review of the
14 Homeowners Association (HOA) Dispute Process Petition shows that Barry Saxion and
15 Sandra Saxion both signed the Petition on the signature line as the petitioner and that
16 both their names were typed on the Print Name line as the petitioner. When the Arizona
17 Department of Real Estate (Department) referred the matter to the Office of
18 Administrative Hearings, it created the caption in this case as Barry Saxion v. Silverton II
19 Homeowners Association, Inc. However, it is clear that Sandra Saxion, who does own
20 property within the Association, signed the Petition and has standing to pursue this action.
21 Therefore, to the extent the Motion is premised on Barry Saxion being the Petitioner,

22 **IT IS RECOMMENDED** that the Motion be denied.

23 Additionally, Respondent argued that the Motion must be dismissed because
24 Section 12.1 of the Declaration of Homeowners Benefits and Covenants, Conditions, and
25 Restrictions for Silverton II (Declaration) require that all covered claims "must be resolved
26 using the dispute resolution procedures set forth . . . in [the] Declaration and the Bylaws in
27 lieu of filing a lawsuit or initiating administrative proceedings." Covered claims are defined
28 as "all claims, grievances, controversies, disagreements, or disputes that arise in whole or
29 part out of . . . the interpretation, application, or enforcement of the Declaration or the other
30 Project Documents."

1 The plain language of the Declaration prevents this dispute, as it relates to the
2 interpretation, application, or enforcement of the governing documents, to be brought in
3 the Office of Administrative Hearings and mandates that the dispute must be handled
4 through the dispute resolution process set forth in the Declaration and Bylaws. In view of
5 the foregoing,

6 **IT IS RECOMMENDED** that the Petition in this matter be dismissed as the
7 applicable governing documents require that the claim must be handled through the
8 dispute resolution process prior to administrative proceedings being brought.

9 *In the event of certification of this Administrative Law Judge Decision by the*
10 *Director of the Office of Administrative Hearings, the effective date of these Orders will be*
11 *40 days from the date of the certification.*

12 Done this day, May 16, 2017

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15 /s/ Tammy L. Eigenheer
16 Administrative Law Judge
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18 Transmitted electronically to:

19 Judy Lowe, Commissioner
20 Arizona Department of Real Estate
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