

1 **BEFORE THE DEPARTMENT OF REAL ESTATE**
2 **OFFICE OF ADMINISTRATION**
3 **IN AND FOR THE STATE OF ARIZONA**

4
5 **Barry and Sandra Saxion,**)
6 **Petitioner,**) **CASE NO. HO 17-16/023**
7 **vs.**) **DOCKET NO. 17F-H1716023-REL**
8 **Silverton II Homeowners Association, Inc.**) **FINAL ORDER**
9 **Respondent.**)
10 _____)

11 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.08, the attached
12 Administrative Law Judge ("ALJ") Decision is adopted by the Commissioner of the Department
13 of Real Estate ("Commissioner") and is accepted as follows:

14 **ORDER**

15 The Commissioner accepts the ALJ decision that the petition in this matter be
16 dismissed as the applicable governing documents require that the claim must be handled
17 through the dispute resolution process prior to administrative proceedings being brought.

18 Pursuant to A.R.S. § 41-1092.09, a party may file a motion for rehearing or review
19 within thirty (30) days after the service of this final Order. A written request for rehearing should
20 be addressed to Abby Hansen, 2910 N. 44th Street, Suite 100, Phoenix, Arizona, 85018.

21 This Order is a final administrative action and is effective immediately from the
22 date service is complete. A party may appeal this final administrative decision by filing a
23 complaint for judicial review pursuant to title 12, chapter 7, article 6. The Order will not be
24 stayed unless a stay is obtained from the court in conjunction with the judicial review action.

25 **DATED this 30th day of May, 2017.**

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27 
28 **Judy Lowe, Commissioner**

DEPARTMENT OF REAL ESTATE

The foregoing mailed this 30th day of May, 2017,
via certified mail receipt number 7015 1520 0000 8792 1936 to:

Barry Saxion
8829 W Potter Dr.
Peoria AZ 85382

Copy sent via certified mail receipt no. 7015 1520 0000 8792 1943 to:

Troy B. Stratman, Esq.
Stratman Law Firm, PLC
20860 N. Tatum Blvd. Ste. 380
Phoenix AZ 85050-4286

COPY electronically transmitted to:

The Office of Administrative Hearings
1400 W Washington St, Suite 101
Phoenix, AZ 85007

By:


Abby Hansen
HOA Coordinator

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No. 17F-H1716023-REL

ADMINISTRATIVE LAW JUDGE DECISION

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

Additionally, Respondent argued that the Motion must be dismissed because Section 12.1 of the Declaration of Homeowners Benefits and Covenants, Conditions, and Restrictions for Silverton II (Declaration) require that all covered claims “must be resolved using the dispute resolution procedures set forth . . . in [the] Declaration and the Bylaws in lieu of filing a lawsuit or initiating administrative proceedings.” Covered claims are defined as “all claims, grievances, controversies, disagreements, or disputes that arise in whole or part out of . . . the interpretation, application, or enforcement of the Declaration or the other 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*
11 *be 40 days from the date of the certification.*

12 Done this day, May 16, 2017

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15 /s/ Tammy L. Eigenheer
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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Minute Entry

Silverton II Homeowners Association, Inc.
Respondent

Done this day, May 16, 2017.

Transmitted by either mail, e-mail, or facsimile May 16, 2017 to:

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826