Final agency action regarding decision below:

ALJFIN ALJ Decision final by statute

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

JOHN R KRAHN LIVING TRUST / JANET KRAHN LIVING TRUST, Petitioner, v. TONTO FOREST ESTATES HOMEOWNERS ASSOCIATION, Respondent.	No. 25F-H076-REL **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: October 29, 2025.

APPEARANCES:

For Petitioner: John R. Krahn.

For Respondents: Dwight A Jolivette.

ADMINISTRATIVE LAW JUDGE: Samuel Fox

EXHIBITS ADMITTED INTO EVIDENCE: Notice of Hearing File, provided by the Department of Real Estate. Petitioner's Exhibits 1 through 15 and 17 through 20. Respondent's Exhibits A and B.

FINDINGS OF FACT

1. Tonto Forest Estates Homeowners Association ("Respondent") is a Homeowners Association in Arizona.

2. John Krahn ("Petitioner") owns a home located in the community and is a member of Respondent.

3. On or about July 25, 2025, Petitioner filed a one-issue Petition with the Arizona Department of Real Estate ("Department") alleging that Respondent had violated A.R.S. § 33-1805. The single issue was as follows:

> Petitioner alleges Respondent of violating "ARS §33-1805 by failing to provide requested association records within the statutory 10-business-day deadline.[1]

4. Respondent filed a written answer to the Petition.[2]

5. Throughout the relevant period, Kenneth Riley served as the Secretary of the Board of Directors.[3] According to the Association Bylaws, the Secretary was the custodian of association records.[4]

6. On or around March 21, 2025, Respondent issued a formal Cease and Desist letter, demanding Complainant stop email communication with the community manager.[5] It stated that all further concerns or correspondence must be submitted in written form and mailed to Respondent's management office at the given address.[6] The demand letter further stated that Respondent would comply with records requests.[7]

7. Petitioner had sent prior records request to the community manager.[8]

8. On or around June 1, 2025, Petitioner sent an email to Mr. Riley at three known email addresses, requesting to examine listed records.[9] On or around June 3, 2025, Petitioner sent another email to Mr. Riley offering to go to the community manager's office later in the week and requesting a response.

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[1] Not. of Hr'g. File, Homeowners Association (HOA) Dispute Process Petition. (All errors included in original.)
[2] Not. of Hr'g. File, NOA NOP Response Denied Allegations.
[3] *See* Krahn Testimony.
[4] *See e.g.* Pet. Exh. 11.
[5] *See* Cease and Desist Letter.
[6] *See id.* ("Going forward, any concerns or correspondence must be submitted in written form and mailed to the Association's management office at the following address. . . .")
[7] *See id.*
[8] *See* Krahn Testimony.
[9] Pet. Exh. 11.

9. Petitioner did not receive a response about the documents.

10. It was undisputed that the community manager was the appropriate recipient for document requests prior to the Cease-and-Desist letter.

11. Petitioner testified that the Cease-and-Desist letter prohibited him from contacting the community manager.

12. Petitioner testified that the community manager had previously directed him to Mr. Riley. Petitioner identified one instance, on March 4, 2025, when he was directed to Mr. Riley and the Board of Directors to answer specific questions, not for a document request. No evidence was introduced that Mr. Riley or the Board of Directors were ever appropriate recipients of document requests.[10]

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction and was properly before the Office of Administrative Hearings. A member of a planned community may file a petition with the Department for a hearing concerning the planned community association's alleged violations as set forth in Title 33, Chapter 16.[11] The administrative law judge may "adjudicate complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned community documents."[12] If a party meets their burden, the administrative law judge may "order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation."[13]

[10] Petitioner contended that because the Secretary was the custodian, he was an appropriate recipient for the request.
[11] A.R.S. § 32-2199.01.
[12] A.R.S. § 32-2199.
[13] A.R.S. § 32-2199.02.

2. Petitioners bear the burden of proof to establish that Respondent violated applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.[14] Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.[15]

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[16] A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."[17]

4. "[A]ll financial and other records of the association shall be made reasonably available for examination by any member. . . . The association shall have ten business days to fulfill a request for examination."[18]

5. The statute requires that documents be made reasonably available and provides the association ten days to fulfil the request. The statue does not provide other relevant procedural limits for document requests. The statute does not prohibit an association from setting a process for requesting documents. The statute does not require every member of an association or its Board of Directors to accept service of such requests. The statute does not require an association to accept requests by email. Based on the above, the guiding principle is reasonability: the statute requires an

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[14] *See* A.A.C. R2-19-119(A) and (B)(1); *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[15] *See* A.A.C. R2-19-119(B)(2).
[16] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[17] BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).
[18] A.R.S. § 33-1805(A).

association to make the ability to request documents "reasonably available" and must make the documents themselves "reasonably available."[19]

6. There was no dispute that prior to the Cease-and-Desist letter Complainant's ordinary process for requesting documents was to address such requests to the community manager.

7. The Cease-and-Desist letter insisted Petitioner submit future correspondence by physical mail, notifying him that Respondent would no longer accept such communications by email.[20] It provided a clear process for future requests: "Going forward, any concerns or correspondence must be submitted in written form and mailed to the Association's management office at the following address. . . ."

8. Petitioner and Respondent have a challenged relationship, as is demonstrated by the eleven matters between them at the Arizona Office of Administrative Hearings. A poor relationship does not change the parties obligations: Respondent must provide a reasonably accessible method for submitting document requests and make documents reasonably available, and Petitioner must make efforts to work with the Respondent, including submitting document requests to the identified person in the prescribed manner.

9. Requiring document requests be submitted through the mail is reasonable. If Petitioner had been prohibited from contacting the community manager, he would have prevailed. However, the preponderance of the evidence established that Respondent informed Petitioner about how to submit future requests, and Petitioner disregarded that information.

[19] No Bylaws or CC&Rs were introduced to establish another formal process or support that Petitioner's process as appropriate.
[20] Disparate treatment is not at issue in this matter.

10. Accordingly, Petitioner failed to meet his burden that the documents were not made reasonably available and that Respondent failed to meet their requirement to produce those documents within ten days.

ORDER

IT IS ORDERED that Respondent be deemed the prevailing party in this matter.

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, November 18, 2025.

/s/ Samuel Fox
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile November 18, 2025 to:

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