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, vs. Tonto Forest Estates Homeowners Association Respondent.	No. 25F-H057-REL **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: October 22, 2025 with the record held open until November 3, 2025 to allow for the submission of post-hearing exhibits and responses.

APPEARANCES: John Khran appeared no behalf of Petitioner.

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

EXHIBITS ADMITTED INTO EVIDENCE: Petitioner's Exhibits 1 through 13. Respondent's Exhibit A.

FINDINGS OF FACT

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. Homeowners' associations and their members are governed by the Chapter 16 of Title 33, the Planned Communities Act, Arizona Revised Statutes (A.R.S.) §§ 33-1801 to 33-1818.

2. Respondent is a homeowners' association whose members own property in the Toronto Forest Estates development in Mesa, Arizona.

3. Petitioner owns property in Toronto Forest Estates and is a member of Respondent. John Khran (Khran) is Petitioner's trustee.

4. On March 31, 2025, Khran submitted a request to Respondent to examine the March 2025 check register and "All **Maxwell & Morgan invoices** dated from December 1, 2024 through the date I am permitted to review them (or through the date they are sent to me)."[1] Khran's request further provided, "Since I live just a few houses down from you, I am available to view these records at your home any day (any time) this week. I am also available to view these records at the Ogden office on Thursday, April 3rd around noon. Alternatively, you may provide them by any method you prefer, so long as the request for examination is fulfilled within the ten business days prescribed by ARS 33-1805."[2]

5. On or about April 10, 2025, Respondent mailed a copy of all the items that he requested on March 31, 2025. However, Respondent mistakenly gave Petitioner a redacted 2025 check register.

6. Respondent uploaded to its online portal and made available to all its members an unredacted March 2025 check register, during the time period of between April 14, 2025 and April 21, 2025.[3] Respondent uploads check registers every month to the portal around the middle of the month.

7. On May 19, 2025, Mr. Khran filed a petition with the Department on behalf of Petitioner that alleged that Respondent had violated Arizona Revised Statute (A.R.S.) 33-1805 by failing to provide an unredacted copy of a March 2025 check register by the statutory deadline. Specifically, the petition provided, "On March 31, 2025, I submitted a lawful records request under ARS 33-1805(A) to examine the Association's March 2025 Check Register and the Maxwell & Morgan (M&M) invoices (proof). Under the statute,

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[1] *See* Petitioner's Narrative Statement and Preliminary Exhibits, pg. 2 of 7.
[2] *See* id.
[3] *See* Petitioner's petition and Narrative Statement and Preliminary Exhibits that according to the second age of the petition was created on April 21, 2025. In Khran's narrative, he acknowledges that the unredacted March 2025 check register was uploaded to the online portal.

the Association had ten business days to comply, making the deadline Monday, April 14, 2025. On or after April 10, 2025, the Association sent via US Mail to me a redacted version of the check register and M&M invoices (proof). After the statutory deadline, the association provided un-redacted versions of the Check Register to the community via the association portal."

8. Respondent filed an answer to the petition, denying that it had engaged in the conduct that Petitioner alleged or violated any statute. The Department referred the petition to the Office of Administrative Hearings, an independent state agency, for an evidentiary hearing.

9. The Department referred the petition to the Office of Administrative Hearings for an evidentiary hearing.

10. On August 7, 2025, the Department issued a Notice of Hearing setting the matter for hearing on September 8, 2025.[4] The Notice of Hearing provided that the issue set for determination was, "Petitioner alleges the Respondent of violating ARS § 33-1805 by willful[ly] withholding of association records."

11. A hearing was held on October 22, 2025.

12. At hearing, Khran testified on behalf of Petitioner. Dwight A. Jolivette, Respondent's President, testified on behalf of Respondent.

13. At hearing, Mr. Khran asserted that Respondent had no legal grounds to send him a copy of a redacted March 2025 check register. Mr. Jolivette did not dispute Mr. Khan's assertion. In fact, Mr. Jolivette explained that the community manager provided a clerk with a redacted version and an unredacted version of the March 2025 check register. Mr. Jolivette explained that the clerk mailed the unredacted version to Khran. Mr. Jolivette stated that Respondent did not know that a redacted version was mailed to Khran. Mr. Jolivette explained that Respondent posts information such as check registers to its online portal around the middle of each month. The online portal is accessible to all of its members.

[4] The hearing was continued to October 22, 2025.

14. Mr. Jolivette explained that Respondnet's Exhibit 4 shows that the unredacted March 2025 check register was uploaded to the portal on April 14, 2025. Mr. Jolivette entered into evidence Exhibit A from Respondent's community manager at the time who clarified that the report generated date shows the date that the document was submitted to the online portal.

15. Khran is a former member of Respondent's board. Khran contended that

the report generated date does not show the date hat the document was submitted to the portal. Khan contended that the report generated date only shows the date the document was created, and not the date the document was uploaded to the portal. Respondent erroneously sent a redacted March 2025 check register. Khran contended that Respondent's withholding of the unredacted check register was "personal".

16. Upon consideration of the evidence presented at hearing, the Administrative Law Judge (ALJ) finds that there was insufficient evidence to establish that Respondent purposefully neglected to mail Khran an unredacted March 2025 check register or that the failure to include the correct check register in the mail on April 10, 2025 was "personal." Furthermore, the Administrative Law judge finds that there was insufficient evidence to establish that Respondent had a negligent pattern of responding to records requests in error or untimely.

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.[5] Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

[5] *See* A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development's CC&Rs.

2. Petitioner bears the burden of proof to establish that Respondent violated the Act or Respondent's CC&Rs by a preponderance of the evidence.[6] Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.[7]

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[8] 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."[9]

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

5. A.R.S. § 33-1805. Association financial and other records provides:

> A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

6. It is undisputed that the unredacted March 2025 check register was uploaded to Respondent's online portal which is available to all members before the petition was

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[6] *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 Ariz. 369, 372, 249 P.2d 837 (1952).
[7] *See* A.A.C. R2-19-119(B)(2).
[8] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).
[9] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).
[10] *See Powell v. Washburn,* 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).
[11] *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).

filed. The petition shows that Khran was aware that the unredacted Marh 2025 check register was posted to the online portal as of April 21, 2025. Even if the unredacted check register was made available on its website after the 10-day statutory period, the issue is now moot.

7. Accordingly, the petition must be dismissed.

RECOMMENDED ORDER

IT IS ORDERED that John R Krahn Living Trust / Janet Krahn Living Trust's petition against Respondent Tonto Forest Estates Homeowners Association is dismissed.

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 24, 2025.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile November 24, 2025 to:

Susan Nicolson
Commissioner
Arizona Department of Real Estate

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By: OAH Staff