

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Oak Creek Knolls Property Owners
4 Association, Inc.
5 Petitioner
6 vs
7 Kim M. Grill
8 Respondent

No. 22F-H2222039-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 **HEARING:** August 4, 2022, with the record held open to receive additional
10 briefing.

11 **APPEARANCES:** Petitioner Oak Creek Knolls Property Owners Association, Inc.
12 was represented by Augustus H. Shaw, IV. Respondent Kim M. Grill was represented by
13 Lawrence J. Felder.

14 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

15 After review of the hearing record in this matter, the undersigned Administrative
16 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
17 ADMINISTRATIVE LAW JUDGE DECISION.

18 **FINDINGS OF FACT**

19 **PROCEDURE AND BACKGROUND**

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

23 2. On or about March 18, 2022, Petitioner Oak Creek Knolls Property Owners
24 Association, Inc. filed a single-issue petition and paid the \$500.00 filing fee with the
25 Department. Petitioner alleged that Respondent Kim M. Grill violated Article 2, Section
26 2.11 of the Restatement of Declaration of Covenants, Conditions and Restrictions
27 (CC&Rs) "by renting or leasing less than the Respondent's entire residential property
28 unit."

29 3. On or about April 24, 2022, the Department received Respondent's reply
30 whereby Respondent denied the alleged violation(s).

1 4. Per the May 4, 2022, NOTICE OF HEARING, the Department referred this
2 matter to the Office of Administrative Hearings (OAH), an independent state agency
3 unaffiliated with either party, for an evidentiary hearing regarding the following "Dispute:"

4 **Petitioner stated that Respondent "violated the rental restrictions and**
5 **'Residential Use' provisions as set forth in Article 2 Section 2.11" of**
6 **the Restatement of Declaration of Covenants, Conditions and**
7 **Restrictions for Oak Creek Knolls Subdivision by "renting or leasing**
8 **less than the entire Property residence...[which] is a breach of the**
9 **contractual agreement and relationship between Respondent and the**
10 **Association."**

11 **THE PARTIES AND GOVERNING DOCUMENTS**

12 5. Petitioner is a homeowners' association whose members own properties in
13 a residential real estate development located in Sedona, Arizona.¹ Membership for the
14 Association is comprised of the single-family residences located within the parameters
15 of the Oak Creek Knolls Subdivision.

16 6. Respondent is an Oak Creek Knolls Subdivision property owner and is
17 therefore a member of the Association.

18 7. The Association's recorded the CC&Rs with the Coconino County
19 Recorder's Office on March 8, 2017.

20 8. The CC&Rs empowered the Association to control certain aspects of
21 property use within the Association. When a party bought a residential unit in the
22 development, they were supposed to receive a copy of the CC&Rs, at which time they
23 agreed to be bound by its terms. Generally, the CC&Rs forms an enforceable contract
24 between the Association and each property owner.

25 9. Article 2 of the CC&Rs provides, in pertinent part, as follows:

26 **2.11 Residential Use.** All Residential Units shall be used, improved and
27 devoted exclusively to residential use by a Single Family. . . . No Owner
28 shall permit his residential unit to be used for transient purposes or shall
29 lease less than the entire unit. All leases must have a minimum of thirty (30)
30 days.

¹ During the hearing, the issue of whether Petitioner met the statutory definition of a planned community such that OAH had jurisdiction to hearing the issues raised in the Petition. The parties were permitted to submit briefing on the issue. Upon review of the arguments presented in the briefing, the Administrative Law Judge concluded that Petitioner does meet the statutory definition of a planned community.

- 1 d. Respondent signed the Disclosure Statement on December 22, 2018.
- 2 e. At the time Respondent purchased the home, two individuals were renting
- 3 the home.
- 4 f. When the issue of Respondent living in the home and the tenant having less
- 5 than full access to the property was raised as a violation of the governing
- 6 documents, Respondent opted to provide the tenant with a 30 day notice to
- 7 vacate the premises.
- 8 g. At that time, Respondent proposed an amendment to the CC&Rs to remove
- 9 the language "or shall lease less than the entire unit" from Article 2, Section
- 10 2.11 of the CC&Rs to clearly allow for the rental of the in-law suite in her
- 11 home and other similar homes in the Association. The proposed
- 12 amendment ultimately failed.
- 13 h. On or about May 16, 2022, Respondent entered into a "Temporary
- 14 roommate agreement" (Agreement) with Ken Snyder, a 73 year old semi-
- 15 retired attorney. The Agreement provided, in pertinent part, as follows:
- 16 This roommate agreement is entered into by [Respondent] and Ken
- 17 Snyder (Renter) as homeowner desires roommate with full access to
- 18 all living spaces of her residential non-smoking property @ 90
- 19 Pinewood Drive Sedona Arizona 86336 for a period of 12 months. . . .
- 20 1. **Sharing roommate expenses:** On or before the first day of each
- 21 month beginning on or about May 14, 2021, renter agrees to pay
- 22 Homeowner without demand or notice a share of the living expenses
- 23 as the sum of \$1700 in person or by personal check. This expense
- 24 will take care of all utilities including electric, gas, water, sewer,
- 25 internet and cable TV.
- 26 i. Petitioner received complaints regarding Mr. Snyder. The complaints were
- 27 not with respect to anything Mr. Snyder did, but that his presence in
- 28 Respondent's home was an "illegal rental situation" and that there was a
- 29 "stranger living there."
- 30 j. Ms. Frost stated that Mr. Snyder's presence on the neighboring property
- was a disruption to the quiet enjoyment of the community.

- 1 k. Ms. Frost acknowledged that if Respondent was not living in the home, she
2 could rent out the home to an entirely new group of people every 30 days
3 and not be in violation of the CC&Rs. Ms. Frost asserted that “would not be
4 a damage or detriment.”
- 5 l. According to Ms. Frost, Respondent’s physical presence in the home at the
6 same time as the renters “is what causes the damage or detriment.”
- 7 m. Ms. Keller stated that she would be fine with a rental of at least 30 days if it
8 was in compliance with the CC&Rs. Ms. Keller asserted that the damage to
9 the community was in the failure to comply with the letter of the law.
- 10 n. Neither Ms. Frost nor Ms. Keller were able to point out any conduct or
11 behavior of Mr. Snyder that disrupted any other residents of the Association.
- 12 o. Respondent maintained that Mr. Snyder was given access to the entire
13 property during the time of the Agreement.
- 14 p. Respondent stated that if she was forced to end the Agreement with Mr.
15 Snyder, she would be unable to afford the home and would have to sell the
16 property.
- 17 q. Respondent questioned how it would be better for the community to have a
18 different group of people renting the property every 30 days without the
19 owner on site to ensure no disruptions or damage occurred.
- 20 r. Respondent denied that evicting the prior tenant was an admission of a
21 violation, but was her “trying to be a good neighbor.”

22 **CONCLUSIONS OF LAW**

23 1. This matter falls within the Department’s jurisdiction pursuant to ARIZ. REV.
24 STAT. §§ 32-2102 and 32-2199 *et seq.*, regarding a dispute between an owner and a
25 planned community association.

26 2. In this proceeding, Petitioner bears the burden of proving by a
27 preponderance of the evidence that Respondent violated Article 2, Section 2.11 of the
28 CC&Rs. See ARIZ. ADMIN. CODE R2-19-119.
29
30

1 3. “A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not.” MORRIS K. UDALL, ARIZONA LAW OF
3 EVIDENCE § 5 (1960).

4 4. A preponderance of the evidence is “[t]he greater weight of the evidence, not
5 necessarily established by the greater number of witnesses testifying to a fact but by
6 evidence that has the most convincing force; superior evidentiary weight that, though not
7 sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair
8 and impartial mind to one side of the issue rather than the other.” BLACK’S LAW DICTIONARY
9 1220 (8th ed. 1999).

10 5. Article 2 of the CC&Rs provides, in pertinent part, as follows:

11 **2.11 Residential Use.** All Residential Units shall be used, improved and
12 devoted exclusively to residential use by a Single Family. . . . No Owner
13 shall permit his residential unit to be used for transient purposes or shall
14 lease less than the entire unit. All leases must have a minimum of thirty (30)
15 days.

16 6. The CC&Rs define “Single Family” to mean the following:

17 A group of one or more persons each related to the other by blood, marriage
18 or legal adoption, or a group of not more than three (3) persons not all so
19 related, who maintain a common household in a Residential Unit.

20 7. The ultimate question in this matter is whether the Agreement was in
21 compliance with the CC&Rs.²

22 8. By its terms, the Agreement was for a period of greater than 30 days and
23 afforded Mr. Snyder access to the entire unit. There was no argument presented that
24 Respondent and Mr. Snyder were related by blood, marriage, or legal adoption.

25 9. Therefore, the Agreement would not be a violation if Respondent and Mr.
26 Snyder “maintain[ed] a common household.”

27
28 ² Notably, Petitioners assertion on the Disclosure Statement that “[a]n owner may NOT occupy a home at
29 the same time as renting out the home” did not constitute a binding agreement between Petitioner and
30 Respondent, but was merely Respondent’s statement indicating its interpretation of the governing
documents.

10. The term “common household” was not defined in the CC&Rs and is open to different interpretations.

11. By the terms of the Agreement, Mr. Snyder paid a set amount each month as a share of living expenses including utilities, internet, and cable TV. This arrangement, together with the fact that Mr. Snyder had full access to the entire property, could reasonably be interpreted to constitute evidence of a “common household.”

12. Therefore, Petitioner failed to establish by a preponderance of the evidence that Respondent's Agreement with Mr. Snyder was in violation of Article 2, Section 2.11 of the CC&Rs.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioner's petition be denied.

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, October 3, 2022.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile October 3, 2022 to:

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