

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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3
4 Jerry Wheeler,

5 Petitioner,

6 vs.

7
8 Beaver Dam Estates Homeowners
9 Association,

10 Respondent.

No. 18F-H1717036-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

11
12 **HEARING:** September 5, 2017

13 **APPEARANCES:** Petitioner Jerry Wheeler appeared personally. No
14 representative of Respondent Beaver Dam Estates Homeowners Association appeared.

15 **ADMINISTRATIVE LAW JUDGE:** Suzanne Marwil

16
17 Based upon the evidence of record, the Administrative Law Judge makes the
18 following Findings of Fact, Conclusions of Law and Order:

19 **FINDINGS OF FACT**

20 1. Petitioner, who owns a home within Respondent, filed a petition with the Arizona
21 Department of Real Estate on June 8, 2017 alleging that Respondent had not held a
22 meeting in several years. At hearing, Petitioner testified that he had moved in to
23 Respondent on April 1, 2014 and that Respondent had not held a meeting during his
24 tenure at Respondent, leading him to file the petition alleging a violation of A.R.S. § 33-
25 1804(B).

26 2. Respondent's current president, Randy Hawk, responded to the Petition by
27 agreeing to hold as meeting of Respondent.

28 3. The meeting was set for July 18, 2017, but only about ten people attended,
29 leading Hawks to set another meeting for December 28, 2017.

30 4. Hawks then sent a letter to all the members of Respondent notifying them of the
December 28, 2017 meeting at which an election would be held to nominate a new

1 president and vice president. See Exhibit B. The letter enclosed a sheet that could be
2 used to nominate a homeowner for these positions.

3 5. Petitioner subsequently informed the Tribunal that Hawks passed away and that
4 he did not know who could serve as Respondent's representative in this matter.

5 6. On August 16, 2017, the Tribunal issued an order indicating that it had been
6 informed of the passing of Hawks and requesting that Respondent name a new
7 representative as soon as possible. That order was mailed to Respondent's address of
8 record.

9 7. Hearing was held at the Office of Administrative Hearings in Phoenix, Arizona on
10 September 5, 2017.

11 8. Respondent failed to appear at the time scheduled for hearing and did not request
12 to appear telephonically. After the expiration of a 20 minute grace period, the
13 Administrative Law Judge conducted the hearing in Respondent's absence.

14 9. Petitioner testified regarding his many efforts to have Hawks convene a meeting
15 to review Respondent's financial statements with the homeowners. He offered numerous
16 written statements from other homeowners within Respondent confirming that no meeting
17 of Respondent had been held for several years. See Exhibit B.

18 **CONCLUSIONS OF LAW**

19 1. Petitioner filed his petition against Respondent with the Department pursuant to
20 A.R.S. § 32-2199 *et seq.*

21 2. The Department referred this matter to the Office of Administrative Hearings for
22 hearing and the issuance of an Order, pursuant to A.R.S. §§ 32-2199.01(D) and 32-
23 2199.02.

24 3. Pursuant to A.A.C. R2-19-119(B), Petitioner has the burden of proof in this
25 matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).

26 4. A.R.S. § 33-1804 provides in pertinent part as follows:

27 B. Notwithstanding any provision in the community documents, all
28 meetings of the members' association and the board shall be held in
29 this state. *A meeting of the members' association shall be held at*
30 *least once each year.* Special meetings of the members' association
may be called by the president, by a majority of the board of directors
or by members having at least twenty-five percent, or any lower
percentage specified in the bylaws, of the votes in the association.

1 Not fewer than ten nor more than fifty days in advance of any meeting
2 of the members the secretary shall cause notice to be hand-delivered
3 or sent prepaid by United States mail to the mailing address for each
4 lot, parcel or unit owner or to any other mailing address designated in
5 writing by a member. The notice shall state the date, time and place
6 of the meeting. A notice of any annual, regular or special meeting of
7 the members shall also state the purpose for which the meeting is
8 called, including the general nature of any proposed amendment to
9 the declaration or bylaws, changes in assessments that require
10 approval of the members and any proposal to remove a director or an
11 officer. The failure of any member to receive actual notice of a
12 meeting of the members does not affect the validity of any action
13 taken at that meeting.

14 (Emphasis added)

15 5. The unconverted evidence established that Respondent violated A.R.S. § 33-
16 1804(B) by failing to hold the statutorily required annual meeting of Respondent for
17 several years prior to the filing of the petition.

18 6. Respondent should hold an annual meeting in accordance with the planned
19 community statutes.

20 ORDER

21 IT IS ORDERED that Petitioner's petition be granted.

22 IT IS FURTHER ORDERED that Respondent hold a meeting in accordance with
23 the planned community statutes as currently scheduled on December 28, 2017.

24 IT IS FURTHER ORDERED that pursuant to A.R.S. § 32-2199.02(A), the
25 Respondent shall pay to the Petitioner the filing fee required by section 32-2199.01 and
26 shall pay to the planned community hearing office fund established by A.R.S. § 32-
27 2199.05 the sum of \$250.00 as a civil penalty for the violation detailed above.

28 Pursuant to A.R.S. § 32-2199.02(B), this Order is binding on the parties unless a
29 rehearing is granted pursuant to A.R.S. § 32-2199.04 based on a petition setting forth the
30 reasons for the request for rehearing, in which case the order issued at the conclusion of
the rehearing is binding on the parties.

*In the event of certification of the Administrative Law Judge Decision by the
Director of the Office of Administrative Hearings, the effective date of the Order will be five
days from the date of that certification.*

1 Done this day, September 6, 2017.

2
3 /s/ Suzanne Marwil
4 Administrative Law Judge
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6 Transmitted electronically to:

7 Judy Lowe, Commissioner
8 Arizona Department of Real Estate
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