

JANET NAPOLITANO
Governor



ROBERT BARGER
Director

DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

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OFFICE OF ADMINISTRATION * OFFICE OF MANUFACTURED HOUSING * OFFICE OF STATE FIRE MARSHAL

February 14, 2007

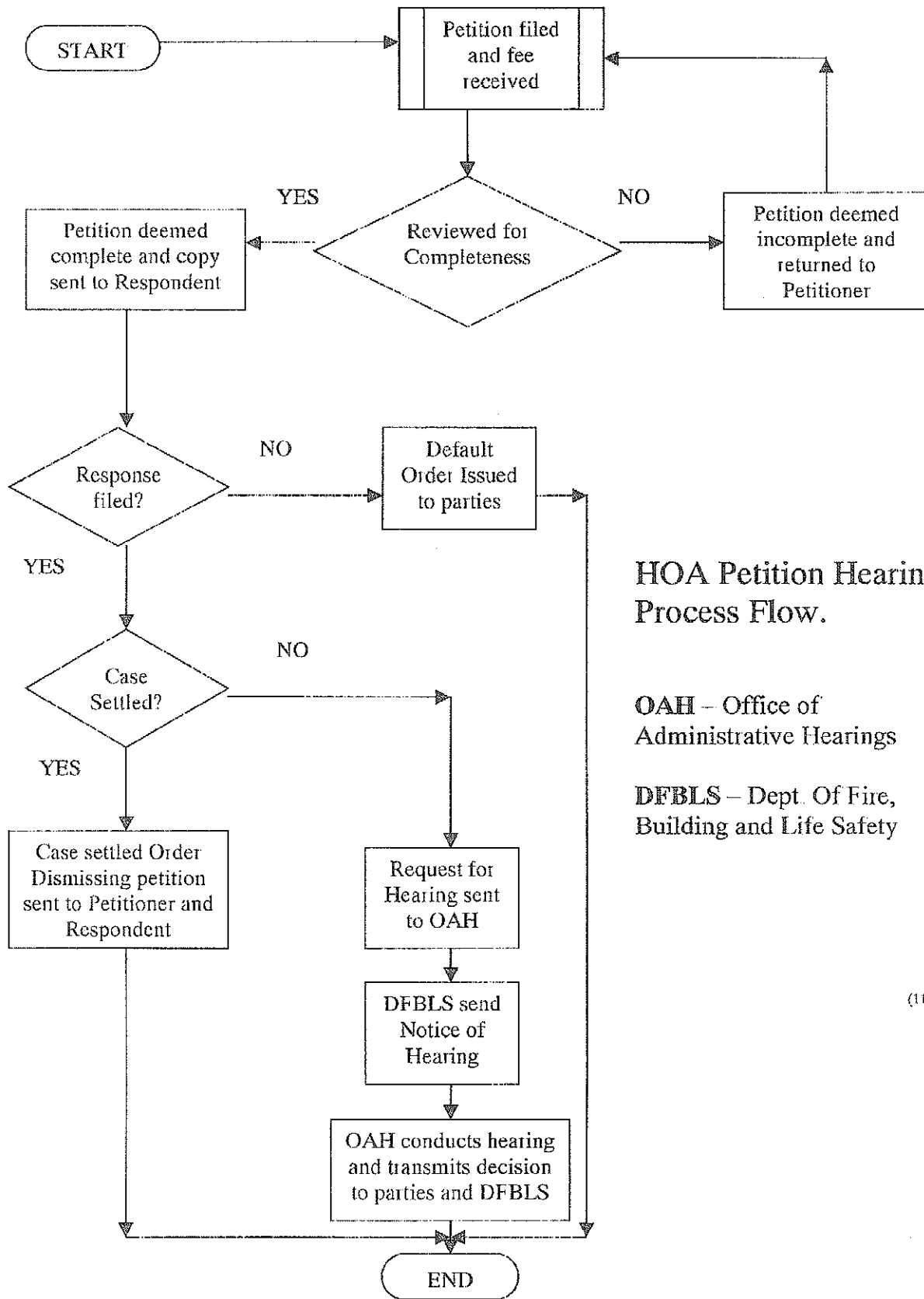
In 2006, the Arizona 47th Legislature passed legislation that provides the people of Arizona a venue to homeowners and condominium and planned community associations (HOA) to resolving disputes. These administrative procedures do not limit the rights of the parties to pursue matters in the legal system, but provides an alternative. This legislation became law on September 21, 2006.

There are a few points of the legislation that need to be made perfectly clear:

- The \$2000 Filing Fees are NON-Refundable, by law.
- Filing Fees amount will be reviewed on a regular basis and the current fee amount is effective until April 1, 2007.
- Only an owner or association may petition the Department for a hearing.
- An owner's petition (complaint) must be about a dispute between the owner and the association.
- An association's petition (complaint) must be about a dispute between the association and the owner.
- The Department cannot accept petitions (complaints) filed by or against renters, non-owners, directors, representatives, other homeowners, management companies and the like.

Sincerely,

Robert Barger, Director
Department of Fire, Building and Life Safety



HOA Petition Hearing Process Flow.

OAH – Office of Administrative Hearings

DFBLS – Dept. Of Fire, Building and Life Safety

(11/6/06)

ARIZONA DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

PETITION AND RESPONSE

HOMEOWNER'S ASSOCIATION HEARING

A.R.S. § 41-2198 et seq.

NOTICE

This Petition may be used **only** for a **dispute between an owner and a condominium association or planned community association** that is regulated pursuant to Arizona Revised Statutes title 33, chapter 9 or 16. The dispute must concern violation of condominium documents or planned community documents or violation of the statutes that regulate condominiums or planned communities. This Petition may **NOT** be used for:

- Any dispute among or between owners to which the association is not a party.
- Any dispute between an owner and any person or entity engaged in the business of designing, constructing or selling a condominium or any property or improvements within a planned community, including any person or entity licensed pursuant to title 32, chapter 20, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.

DEFINITIONS

In the Petition and Answer:

"Condominium Documents" and "Planned Community Documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

INSTRUCTIONS FOR PETITION

- A. Fully complete the Petition, exactly as indicated. **Please print or type.**
- B. Enclose a check or money order for the **nonrefundable** filing fee of \$2000, payable to Department of Fire, Building and Life Safety. (fee amount effective until 4/1/07)
- C. Attach only a copy of applicable Condominium or Planned Community documents.
- D. Please provide two copies of submitted documents, one will be sent to the respondents and one copy will be sent to the Office of Administrative Hearings.
- E. If you do not fully complete the Petition as indicated, enclose the filing fee, and, if applicable, attach the Condominium or Planned Community documents, the Petition will be returned to you as incomplete.
- E. Submit Petition, fee, and documents to:

LTA/HOA Dept.
Department of Fire, Building and Life Safety
1110 West Washington Ave., Suite #100
Phoenix, AZ 85007

PETITION (To be Completed by Petitioner)

BACKGROUND

1. Petitioner is a (check one):
 Homeowner Condominium or Planned Community Association

2. Complete the following:

	Homeowner	Condominium or Planned Community Association
Name		
Address		
Daytime Phone	()	()

3. Does the Condominium or Planned Community have a company responsible for its MANAGEMENT? Yes No . If yes, complete the following:

Name of Management Company _____

Address: _____

Phone Number () _____

COMPLAINT

INSTRUCTIONS

- A. Using the table below, describe the specific acts or conditions that you believe violate:
- The statutes that regulate condominiums or planned communities, Arizona Revised Statutes Title 33, Chapter 9 or 16, or
 - The Condominium Documents or Planned Community Documents.
- B. Include the specific dates when each act occurred or when each condition came into existence.
- C. You must state each act or condition separately in the spaces provided below
- D. For each act or condition, in the table list the section number of the applicable statute(s) and, if applicable, the Condominium Documents or Planned Community Documents, which you believe have been violated.
- F. **Any petition that does not separately state each act or condition in the table with a separate citation to the specific section of the statute that relates to each act or condition, or fails to list the specific provisions of the Condominium or Planned Community documents in the table will be considered to be incomplete and will be returned. All information must be provided in the table. Do not say "see attached" instead of filling in the table.**
- G. If the complaint involves the failure to receive the Condominium or Planned Community documents, specifically state that they are unavailable and the facts and circumstances why they cannot be provided with the petition.
- H. Please provide copies of relevant or actual text/pages of the bylaws or documents sections. Please keep all other correspondence or evidence for admission at the hearing

EXAMPLES

Act, Omission, or Condition; Dates	Applicable Section of Condominium or Planned Community Documents	Applicable Section of Arizona Revised Statutes
The bylaws and statutes require the association to hold at least one annual meeting. The association failed to hold any annual meeting in 2005 or 2006.	Bylaw No. 5	A R S § 33-1804(B)
The swimming pool pump broke on August 5, 2006, and the association has failed to repair it. The pool is green and not safe for swimming.	Bylaw No. 37.1	A R S § 33-1247(A)
The statute requires the association to maintain property insurance on the common elements. The association let the property insurance on the common elements lapse in September 2006 and isn't doing anything about getting a new policy.		A R S § 33-1253
The bylaws require the homeowner to pay a monthly association fee. The homeowner did not pay the fee due in May, June, July, and August 2006 (Complaint by the Association.)	Bylaw No. 25(A)	

4. COMPLETE THE TABLE BELOW

	Act, Omission, or Condition	Applicable Section of Condominium or Planned Community Documents	Applicable Section of Arizona Revised Statutes
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Attach page for additional allegations. You must use the table format shown above

RELIEF REQUESTED

5. Petitioner requests that the following relief be awarded regarding the acts, omissions, or conditions described in the table above (check all relief requested):

_____ Order a party to abide by the statute(s) specified in the table above.

_____ Order a party to abide by the section(s) of the condominium document(s) or community document(s) specified in the table above.

_____ Impose a civil penalty on the basis of each violation specified in the table.

_____ If the petitioner prevails, order the respondent to pay to the petitioner the filing fee required by A.R.S. § 41-2198-01.

6. Petitioner expects to call the following number of witness at hearing: _____.

7. By signing below, Petitioner requests that a hearing be held before the Office of Administrative Hearings. If Petitioner is an Association, the signer is authorized to sign on behalf of the Association.

Petitioner's Signature _____ Date _____

Print Name _____

Title, if Petitioner is an Association _____

REMINDER: If you do not fully complete the Petition as indicated, enclose the filing fee, and, if applicable, attach the Condominium or Planned Community documents, the Petition will be returned to you as incomplete.

Frequently Asked Questions

1. *Who can request a hearing?*

Pursuant to A.R.S. § 41-2198.01(B), Only an owner or association may petition the Department for a hearing

2. *Who is the petitioner?*

Prior to a matter being referred to the OAH for a hearing, there can only be one petitioner for a petition. The petitioner is the name of the person who is identified on the petition as the petitioner. A.R.S. § 41-2198.01(b) involving disputes between an owner and a condominium association or planned community association, which provides for a petitioner (singular) to file a petition for hearing with the Department along with a nonrefundable filing fee

3. *How do different petitioners request to have their hearing consolidated?*

After the matter is set for a hearing before the OAH, a petitioner may request to have one or more hearings consolidated by filing such a request with the OAH and comply with OAH's procedures and rules.

4. *Who can act as a representation of a party?*

If a party is an individual, the person may represent himself/herself or arrange for legal counsel.

If a party is a legal entity that is identified in Arizona Supreme Court Rule 31, it may have an authorized employee or officer represent it provided there is compliance with the rule or the entity may arrange for legal counsel.¹

(2/14/07)

¹ Notwithstanding the representation provisions set forth in A.R.S. §§ 41-2198.01(I) and 41-2198.04(D), Arizona Supreme Court Rule 31 controls over representation issues before the OAH

5. *Who issues a default decision?*

If a respondent does not submit a response in answer to the petition, the Director shall issue a default decision.² The Director shall issue an Order finding the respondent in default and deem the allegations in the petition admitted.³

6. *Who issues the final decision?*

The Administrative Law Judge Decision issues the final hearing decision. The Director of the Department issues an order of dismissal if the case is settled before a hearing or an order on default if no response is received.

7. *How was the filing fee set?*

The legislation mandated that this program to be self-funded or self-sustaining. The filing fee amount is set according to actual cost of providing the services of this program by the Department of Fire, Building and Life Safety and the Office of Administrative Hearings. Thus, this program should not be a burden on the state taxpayers but be paid for by the persons that utilize this program.

² See A.R.S § 41- 2198 01(F)

³ A.R.S § 41-2198.01(B) contemplates disputes between an owner and a condominium or planned community association.