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POINTESMTN.0014

6 *Attorneys for Respondent The Pointe South Mountain  
Residential Association*

7 **ARIZONA DEPARTMENT OF REAL ESTATE**

8 **Case No. 23F-H054**

9 Petitioner,

**RESPONDENT’S MOTION TO  
DISMISS PETITION**

10 vs.

(Filed with Arizona Department of  
Real Estate)

11 THE POINTE SOUTH MOUNTAIN  
RESIDENTIAL ASSOCIATION, an Arizona  
12 non-profit corporation,

13 Respondent.

14  
15 Respondent The Pointe South Mountain Residential Association (“Association”),  
16 hereby submits its Motion to Dismiss the above-captioned Petition (“Petition”) filed by

17 -- (“Petitioner”) pursuant to Ariz. Rev. Stat. § 32-2199.01(D) and Ariz.  
18 Admin. Code § R2-19-106. In support of its motion, Respondent states as follows:

19 **I. STATEMENT OF FACTS AND RELEVANT BACKGROUND**

1           The Petitioner filed a Petition for Hearing (the “Petition”) with the Arizona  
2 Department of Real Estate (the “Department”) on April 4, 2023. The Petition alleges that the  
3 Association will be in violation of the Association’s governing documents and Arizona law  
4 for failing to provide the Petitioner with proper notice of an Association meeting/workshop  
5 that was held on March 14, 2023. The Petition is requesting relief from the Department  
6 concerning alleged actions the Association failed to take, however, notice was given prior to  
7 the meeting/workshop as required under the Association’s governing documents and  
8 Arizona law. Accordingly, the Petition should be dismissed.

9           The Petitioner alleges two (2) separate violations, (1) that the Association violated the  
10 meeting notice requirements by not providing notice and (2) not providing an agenda prior  
11 to the meeting. The Petitioner alleges that these actions are in violation of The Pointe South  
12 Mountain Residential Association Restated Declaration of Homeowner Benefits and  
13 Assurances (the “Declaration”), The Pointe South Mountain Residential Association  
14 Amended Bylaws (the “Bylaws”), and A.R.S. § 33-1804. As the Court will see below, the  
15 Petition should be dismissed because notice was provided at least forty-eight (48) hours prior  
16 to the meeting and an agenda was provided at the time of the meeting as required under the  
17 Association’s governing documents and Arizona law.

## 18       **II.    ARGUMENT**

### 19           **a.   The Petition incorrectly states that notice of the meeting was not given.**

20

1 Under Arizona law A.R.S. §33-1804(D) states “Notwithstanding any provision in  
2 the declaration, bylaws or other community documents, for meetings of the board of  
3 directors [...] notice to members of meetings of the board of directors shall be given at  
4 least forty-eight hours in advance of the meeting by **newsletter, conspicuous posting or**  
5 **any other reasonable means** as determined by the board of directors” (emphasis added).

6 Here, the Petition states that on March 14, 2023, “All PSMRA HOA Board  
7 Members met for a workshop” (*see* “Petition”). The Petition goes on to allege that “The  
8 meeting was not posted [...] at least 48 hours ahead of the meeting.” *Id.* However, the  
9 Association’s Board of Directors held a meeting/workshop on March 14, 2023, with prior  
10 notice as shown in a “community survey/notice” posted to the Association’s community  
11 website (attached as Exhibit “A”).

12 The community survey/notice states that a meeting was held on February 28, 2023,  
13 and this survey along with summaries of the presentations of the February meeting were  
14 all posted to the community website (<https://pointesouthmaountain.connectresident.com>).  
15 The community survey/notice goes on to list that survey responses are due no later than  
16 March 12, 2023; that the survey results will be compiled and presented to the Board of  
17 Directors on March 13, 2023; and there will be a workshop/meeting held on March 14,  
18 2023 at 6:00 pm.

19 The community survey/notice and the community website address provides any  
20 member of the Association with the date, time, and location of the workshop/meeting and

1 it was sent out with at least forty-eight (48) hours prior. Since the date, time, and location  
2 of the meeting were all posted prior on a website or through any other reasonable means  
3 as determined by the Board of Directors, proper notice was made in advance of the  
4 meeting under Arizona law.

5 Accordingly, the Association respectfully requests that the Administrative Law  
6 Judge dismiss the Petition's allegation related to meeting notice.

7 **b. The Petition states that an agenda was provided at the time of the**  
8 **meeting.**

9 Under Arizona law A.R.S. §33-1804(E)(1) states "Notwithstanding any provision  
10 in the declaration, bylaws or other community documents, for meetings of the board of  
11 directors that are held after the termination of declarant control of the association, all of  
12 the following apply: 1. The agenda shall be available to all members attending."

13 Here, the Petition states that at the March 14, 2023 meeting, "the agenda was  
14 provided at the start of the meeting" (*see* "Petition"). The Association did not violate any  
15 portion of its governing documents or Arizona law. The agenda was provided at the  
16 meeting through the Petitioner's own admission. Further, the community survey/notice  
17 provided to the Association's members specifically identified that the purpose of the  
18 meeting was to go over the results of the survey after the February meeting. Moreover,  
19 the Association provided an agenda at the time of the meeting for all in attendance. This  
20

1 satisfies the requirements under Arizona law and ensures the members in attendance were  
2 aware of the information to be discussed at the meeting.

3 Accordingly, the Association respectfully requests that the Administrative Law  
4 Judge to dismiss the Petition's allegation related to the meeting agenda, since the agenda  
5 was provided at the time of the meeting.

6 **III. CONCLUSION**

7 Based on the foregoing, it is clear the Association complied with all relevant laws  
8 and procedures related to a meeting's proper notice and agenda requirements for the  
9 meeting held on March 14, 2023. Therefore, the Petition filed is without merit the  
10 Association respectfully requests that the Petition be dismissed in its entirety, and for any  
11 other such relief the Department deems just and proper.

12 RESPECTFULLY SUBMITTED this 2nd day of May, 2023.

13 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

14 

15 By: \_\_\_\_\_

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1 **ORIGINAL** of the foregoing e-filed  
2 this 2<sup>nd</sup> day of May, 2023.

3 Arizona Department of Real Estate  
4 Office of Administrative Hearings

5 **COPY** of the foregoing mailed and e-mailed  
6 this 2<sup>nd</sup> day of May, 2023 to:

6

7

8 *Petitioner*

9 By: /s/Brianne Roberts

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# **EXHIBIT A**



# COMMUNITY SURVEY

The purpose of this survey is to provide homeowners a time to review and voice your opinions of the proposed plans presented in the Courthome Improvement Workshop held on February 28th, 2023.

You will find the survey includes summaries of the presentations, however, we have uploaded the full presentations on the Community Website under "Community News", which will provide you with a more in-depth review of the proposed solutions. Please save any questions for the next meeting in order to ask the Board directly, or provide your question in the available space on the survey.

These survey results will be compiled and presented to the Board of Directors on March 13th, 2023. Please submit your responses no later than March 12th, 2023.

The next Courthome Improvement Workshop will be held on March 14th, 2023 at 6:00 PM. Meeting details can be found on the website in the Community Calendar.

Community Website:

<https://pointesouthmountain.connectresident.com>

\* How many Courthome Improvement Workshop meetings have you attended?

- 0
- 1
- 2
- 3
- 4

## Announcing the New Courthome Maintenance Manager Position!

The Board has already approved this plan and the hiring process is underway. This new position will upgrade our current assistant community manager to a fully-independent Courthomes Maintenance Manager, at a minimal increase in cost. Importantly, this position immediately starts paying for itself — better bids, less waste, fewer delays, and no more letting small issues fester into big problems.

This person will be ON SITE DAILY to interface with vendors, review work, find unreported issues, and answers to the community. It interfaces with a board liaison and answers to our existing board just as our regular manager does — no need for additional special oversight or an extra layer of bureaucracy. This change, by itself, will allow us to solve most of the maintenance problems currently plaguing the Courthomes without some kind of complex subsidiary board.

## PROPOSED SOLUTION #1

### COURTHOME EXTERIOR MAINTENANCE ASSOCIATION

This plan will form a separate, focused, subsidiary association, the Courthome Exterior Maintenance Association (CEMA) with fiduciary responsibility to administer the courthome maintenance assessments. CEMA will be made up of all courthome Owners, have a courthome