

Degnan Law, PLLC  
David Degnan (AZ SBN 027422)  
Mark W. Horne (AZ SBN 029449)  
5320 North 16<sup>th</sup> Street, Suite 205  
Phoenix, Arizona 85016  
602-266-0531  
[d.degnan@deganlawaz.com](mailto:d.degnan@deganlawaz.com)  
[m.horne@deganlawaz.com](mailto:m.horne@deganlawaz.com)  
*Attorneys for Plaintiff*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

MARTIN PLADGEMAN, an individual;

Case No.:

Plaintiff,

**COMPLAINT**

vs.

ONE HUNDRED HILLS HOMEOWNERS  
ASSOCIATION; an Arizona Non-Profit  
Corporation;

Defendant.

Plaintiff MARTIN PLADGEMAN (“Plaintiff”), by and through counsel and  
for his Complaint herein, hereby alleges as follows:

1. Plaintiff is an individual that resides in Maricopa County, Arizona.
2. Defendant ONE HUNDRED HILLS HOMEOWNERS ASSOCIATION (“Defendant or “the Association”) is an Arizona non-profit corporation located in Maricopa County, Arizona.
3. The actions complained of and which Plaintiff seeks to enjoin took place and are continuing to take place in Maricopa County.
4. Venue and jurisdiction are proper in this Court.

**FACTUAL BACKGROUND**

5. Plaintiff is the owner of the residential real property located at 16022 N. 113<sup>th</sup> Way, Scottsdale, AZ 85255 ("The "Property") at which he resides.

6. The Property and Plaintiff are part of a common-interest community ("the Community") that is governed by the Association as its HOA, and they are thus governed by the Association's CC&Rs, and any rules, policies and procedures that the Association enacts and enforces.

7. The Association's CC&Rs at Section 10.5 provide that. in the event any portion of a lot is being used in violation of the rules, then the Association must make a finding to such effect and give the owner written notice specifying such corrective action that must be taken.

8. The Association has adopted a Fine Policy and Appeal Process ("The Policy" attached hereto as Exhibit "A").

9. The Policy at page one provides that "Board of Directors reserves the right to impose a monetary penalty on the first date of a violation, to accrue the fine daily until the violation is cured, and to impose fines in the amounts in excess of those set forth in the fine schedule of the Fine Policy."

10. The Policy provides for a ten day response time for a member to respond to a violation notice.

11. The Policy provides for an appeal process that requires that a member send a written notice requesting an appeal that demonstrates "extenuating circumstances which require deviation from the" governing documents and that includes "pertinent backup information to support the existence of the extenuating circumstances." Under the Policy, an "appeal that does not meet these requirements shall not be heard and shall be considered DENIED."

1           12. The Policy provides that appeals “shall be heard in Executive Session  
2 and that the “Board will make their decision in closed session.”

3           13. The Policy provides that “Written Notice” of the decision on an appeal  
4 “will be given to the Homeowner of within (7) days working days.”

5           14. The Policy provides several violations for which notice and an  
6 opportunity to be heard are not provided before the imposition of monetary penalties  
7 and/or for which the fines are unreasonable and excessive.

8           15. For example, “any activity that adversely affects the quiet enjoyment of  
9 the neighboring properties” is only provided with notice and an opportunity to be  
10 heard for the first offense. “The second offenses will receive an immediate \$500.00  
11 fine, and all additional offenses will receive a \$1,000.00 fine.”

12           16. On May 2, 2019, the Association automatically assessed a \$500 fine  
13 against Plaintiff for nuisance and the Association automatically collected the funds  
14 from Plaintiff via an ACH debit of Plaintiff’s bank account.

15           17. On May 2, 2019, the Association sent Plaintiff a letter stating that  
16 pursuant to the Policy, “this letter will serve to inform you that a \$500.00 fine has  
17 been levied against you.” (May 2, 2019 “Fine Notice” attached as Exhibit B).

18           18. Prior to the Fine Notice, Plaintiff had never received a notice or  
19 opportunity to be heard for any alleged first offense.

20           19. The Fine Notice states that there was a “First Inspection Date,” “Last  
21 Inspection Date” and “Compliance Date” that were all on April 26, 2019. However,  
22 there were never any inspections done by the Association nor was any compliance  
23 date ever given to Plaintiff.

24           20. The Fine Notice states that it is in “conjunction with previous efforts to  
25 obtain your compliance with” the Association’s governing documents, but there was  
26 in fact no such previous efforts by the Association.  
27  
28

1           21. Plaintiff appealed the Fine Notice and was promised a written decision  
2 that would set aside and vacate the Fine Notice altogether, and the association was  
3 required to do so within seven days under the Policy. However, no such written  
4 decision has been sent to Plaintiff by the Association.

5                                   **COUNT ONE – Breach of Duty**

6           22. Plaintiff hereby incorporates all preceding Paragraphs as if fully set  
7 forth herein.

8           23. The Association owes duties to Plaintiff that are imposed by statute and  
9 the Association’s governing documents.

10          24. In addition to those duties imposed by law and the governing  
11 documents, the Association also has duties to treat Plaintiff and the other members of  
12 the Community fairly, and to act reasonably in the exercise of its discretionary  
13 powers including rulemaking and enforcement. *See* Restat 3d of Prop: Servitudes, §  
14 6.13 (3rd 2000).

15          25. The Policy violates A.R.S. § 33-1803(B) by not providing sufficient  
16 “notice and an opportunity to be heard” before imposing monetary penalties and  
17 collecting them from members of the Community such as Plaintiff.

18          26. The Policy violates A.R.S. § 33-1803(B) by providing for excessive  
19 fines that are completely unreasonable and which have no relation to any actual  
20 damages sustained by the Association or the Community.

21          27. The Policy violates A.R.S. § 33-1803(C) by providing a ten day period  
22 by which members of the Community must respond to a violation notice instead of  
23 the twenty-one day period provided to them under the statute.

24          28. The Policy violates the Association’s duties to treat members of the  
25 community fairly and to act reasonably in the exercise of its discretionary powers  
26 including rulemaking and enforcement, by (1) requiring that appeals of violation  
27  
28

1 notices demonstrate “extenuating circumstances” with “back up information” in  
2 order to be heard, (2) stating that “Appeals shall be heard in executive session”  
3 without informing the community of their rights to have them heard during public  
4 session under A.R.S. § 33-1804(A)(5), (3) giving only ten days to respond as  
5 opposed to the twenty day period provided under A.R.S. § 33-1803(C), (4) failing to  
6 provide notice or an opportunity to be heard before imposing and collecting fines for  
7 certain violations and for subsequent violations, (5) imposing excessive and  
8 unreasonable monetary penalties that have no rational relation to any damages  
9 suffered by the Association or Community, and (6) reserving to the Association the  
10 rights to impose fines on the first day, accrue the fines daily and to impose fines in  
11 excess of the amounts listed in the Policy.

12 29. The Association violated its duty to treat Plaintiff fairly and to act  
13 reasonably in the exercise of its enforcement powers by (1) issuing a false and  
14 wrongful Fine Notice which it knew was false and/or for which it made no attempt to  
15 contact Plaintiff or otherwise verify the accuracy of the allegations contained in the  
16 Fine Notice, and (2) fining Plaintiff \$500 and collecting it without Plaintiff ever  
17 having received a prior violation notice, warning or opportunity to cure such  
18 violation.

19 30. Defendant breached the duty imposed by the Policy by failing to issue a  
20 written notice setting aside the Fine Notice.

21 31. As a result of Defendant’s breach of duty, Plaintiff has suffered and will  
22 suffer damages to be proven at trial.

23 32. Plaintiff is also entitled to the remedy of specific performance requiring  
24 that the Association issue a written notice setting aside the Fine Notice.

25 **COUNT TWO – Preliminary and Permanent Injunction**  
26  
27  
28

1           33. Plaintiff hereby incorporates all preceding Paragraphs as if fully set  
2 forth herein.

3           34. The Policy violates A.R.S. § 33-1803(B) by not providing sufficient  
4 “notice and an opportunity to be heard” before imposing monetary penalties and  
5 collecting them from members of the Community such as Plaintiff.

6           35. The Policy violates A.R.S. § 33-1803(B) by providing for excessive  
7 fines that are completely unreasonable and which have no relation to any actual  
8 damages sustained by the Association or the Community.

9           36. The Policy violates A.R.S. § 33-1803(C) by providing a ten day period  
10 by which members of the Community must respond to a violation notice instead of  
11 the twenty-one day period provided to them under the statute.

12           37. The Policy Violates the Association’s duties to treat members of the  
13 community fairly, to act reasonably in the exercise of its discretionary powers  
14 including rulemaking and enforcement, by (1) requiring that appeals of violation  
15 notices demonstrate “extenuating circumstances” with “back up information” in  
16 order to be heard, (2) stating that “Appeals shall be heard in executive session”  
17 without informing the community of their rights to have them heard during public  
18 session under , (3) giving only ten days to respond as opposed to the twenty day  
19 period provided under , (4) failing to provide notice or an opportunity to be heard  
20 before imposing and collecting fines for certain violations and for subsequent  
21 violations, (5) imposing excessive and unreasonable monetary penalties that have no  
22 rational relation to any damages suffered by the Association or Community, and (6)  
23 reserving to the Association the rights to impose fines on the first day, accrue the  
24 fines daily and to impose fines in excess of the amounts listed in the Policy.

25           38. Defendant should be temporarily and permanently enjoined from  
26 enforcing the Policy in a manner that violates the law or Defendant’s duties.  
27  
28

39. Defendant should be ordered to adopt and/or enforce a policy that is consistent with the law and its duties to the Community.

**COUNT THREE – Declaratory Judgment**

40. Plaintiff hereby incorporates all preceding Paragraphs as if fully set forth herein.

41. Plaintiff is entitled to a declaratory judgment that Policy violates A.R.S. § 33-1803(B) by not providing sufficient “notice and an opportunity to be heard” before imposing monetary penalties and collecting them from members of the Community such as Plaintiff.

42. Plaintiff is entitled to declaratory judgment that the Policy violates A.R.S. § 33-1803(B) by providing for excessive fines that are completely unreasonable and which have no relation to any actual damages sustained by the Association or the Community.

43. Plaintiff is entitled declaratory judgment that the Policy violates A.R.S. § 33-1803(C) by providing a ten day period by which members of the Community must respond to a violation notice instead of the twenty-one day period provided to them under the statute.

44. Plaintiff is entitled to declaratory judgment that the Policy Violates the Association’s duties to treat members of the community fairly, to act reasonably in the exercise of its discretionary powers including rulemaking and enforcement, by (1) requiring that appeals of violation notices demonstrate “extenuating circumstances” with “back up information” in order to be heard, (2) stating that “Appeals shall be heard in executive session” without informing the community of their rights to have them heard during public session under , (3) giving only ten days to respond as opposed to the twenty day period provided under , (4) failing to provide notice or an opportunity to be heard before imposing and collecting fines for

certain violations and for subsequent violations, (5) imposing excessive and unreasonable monetary penalties that have no rational relation to any damages suffered by the Association or Community, and (6) reserving to the Association the rights to impose fines on the first day, accrue the fines daily and to impose fines in excess of the amounts listed in the Policy.

**COUNT FOUR – Breach of the Duty of Good Faith and Fair Dealing**

45. Plaintiff hereby incorporates all preceding Paragraphs as if fully set forth herein.

46. Arizona "law implies a covenant of good faith and fair dealing in every contract." *Rawlings v. Apodaca*, 151 Ariz. 149, 153, 726 P.2d 565, 569 (1986).

47. Arizona law recognizes that a party can breach the implied covenant of good faith and fair dealing both by exercising express discretion in a way inconsistent with a party's reasonable expectations and by acting in ways not expressly excluded by the contract's terms but which nevertheless bear adversely on the party's reasonably expected benefits of the bargain. *Bike Fashion Corp. v. Kramer*, 202 Ariz. 420, 424, 46 P.3d 431, 435 (Ct. App. 2002).

48. Defendant breached the duty of good faith and fair dealing by, among other things, issuing a false and wrongful Fine Notice which it knew was false and/or for which it made no attempt to contact Plaintiff or otherwise verify the accuracy of the allegations contained in the Fine Notice.

49. Defendant breached the duty of good faith and fair dealing by wrongfully fining Plaintiff \$500 and collecting it without Plaintiff ever having received a prior violation notice, warning or opportunity to cure.

50. Defendant breached the duty of good faith and fair dealing by failing to issue a written notice setting aside the Fine Notice.



1           51. As a result of Defendant's breach of the duty of good faith and fair  
2 dealing, Plaintiff has suffered and will suffer damages to be proven at trial.

3                                   **COUNT FIVE – Breach of Contract**

4           52. Plaintiff hereby incorporates all preceding Paragraphs as if fully set  
5 forth herein.

6           53. Defendant is in breach of contract by, among other things, issuing a  
7 false and wrongful Fine Notice which it knew was false and/or for which it made no  
8 attempt to contact Plaintiff or otherwise verify the accuracy of the allegations  
9 contained in the Fine Notice.

10          54. Defendant is in breach of contract by wrongfully fining Plaintiff \$500  
11 and collecting from Plaintiff without Plaintiff ever having received a prior violation  
12 notice, warning or opportunity to cure.

13          55. Defendant is in breach of contract by failing to issue a written notice  
14 setting aside the Fine Notice that was issued to Plaintiff.

15          56. As a result of Defendant's breach of contract, Plaintiff has suffered and  
16 will suffer damages to be proven at trial.

17          57. Plaintiff is entitled to the remedy of specific performance requiring that  
18 the Association issue a written notice setting aside the Fine Notice.  
19

20                                   **WHEREFORE, Plaintiff Prays for the Following Relief:**

- 21
- 22                   a) For temporary and permanent injunctive relief;
- 23                   b) For declaratory relief;
- 24                   c) For damages including but not limited to attorney's fees, the  
25 decrease in value of Plaintiff's residence and for Plaintiff's  
emotional distress;
- 26                   d) For reasonable attorney's fees and costs pursuant to A.R.S. § 12-  
27 341.01;
- 28                   l) For any other relief that the court deems just and proper.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Dated** this \_\_\_\_\_ day of July, 2019.

DEGNAN LAW, PLLC

---

David Degnan, Esq.  
Mark W. Horne, Esq.  
*Attorneys for Plaintiffs*