

No. S17-003J3

TO: Colby Property Management  
10800 Pecan Park Blvd Suite 340  
Austin TX 78750

**THE STATE OF TEXAS  
SMALL CLAIM CITATION**

**YOU ARE HEREBY COMMANDED TO APPEAR** before me, ANDREW W. CABLE, Justice of the Peace, Precinct 3, Hays County, Texas at 14306 Ranch Rd 12, Ste. 11, Wimberley, Texas 78676, then and there to answer the petition of Ariel Axelrod, Plaintiff, filed on February 17, 2017 complaining of El Vinedo Homeowners Association, Inc., Defendant.

The nature of the Plaintiff's claim is: Production of Association Records. Plaintiff sues for \$0.00 in damages, attorney fees, costs of court and such other relief to which Plaintiff may be entitled.

**YOU HAVE BEEN SUED.** You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14<sup>th</sup> day after the day you were served with these papers. If the 14<sup>th</sup> day is a Saturday, Sunday or legal holiday your answer is due by the first day following the 14<sup>th</sup> day that is not a Saturday, Sunday or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online.

**THE LAW PROHIBITS THE JUDGE AND THE CLERKS FROM GIVING LEGAL ADVICE, SO PLEASE DO NOT SEEK SUCH ADVICE FROM THIS OFFICE. ANY LEGAL QUESTIONS YOU HAVE SHOULD BE DIRECTED TO AN ATTORNEY.**

**ISSUED UNDER MY HAND** this 21st day of February, 2017.

Requested By: Ariel Axelrod  
205 Napa Court  
Driftwood, TX 78619



ANDREW W. CABLE  
JUSTICE OF THE PEACE, PCT. 3  
HAYS COUNTY, TEXAS

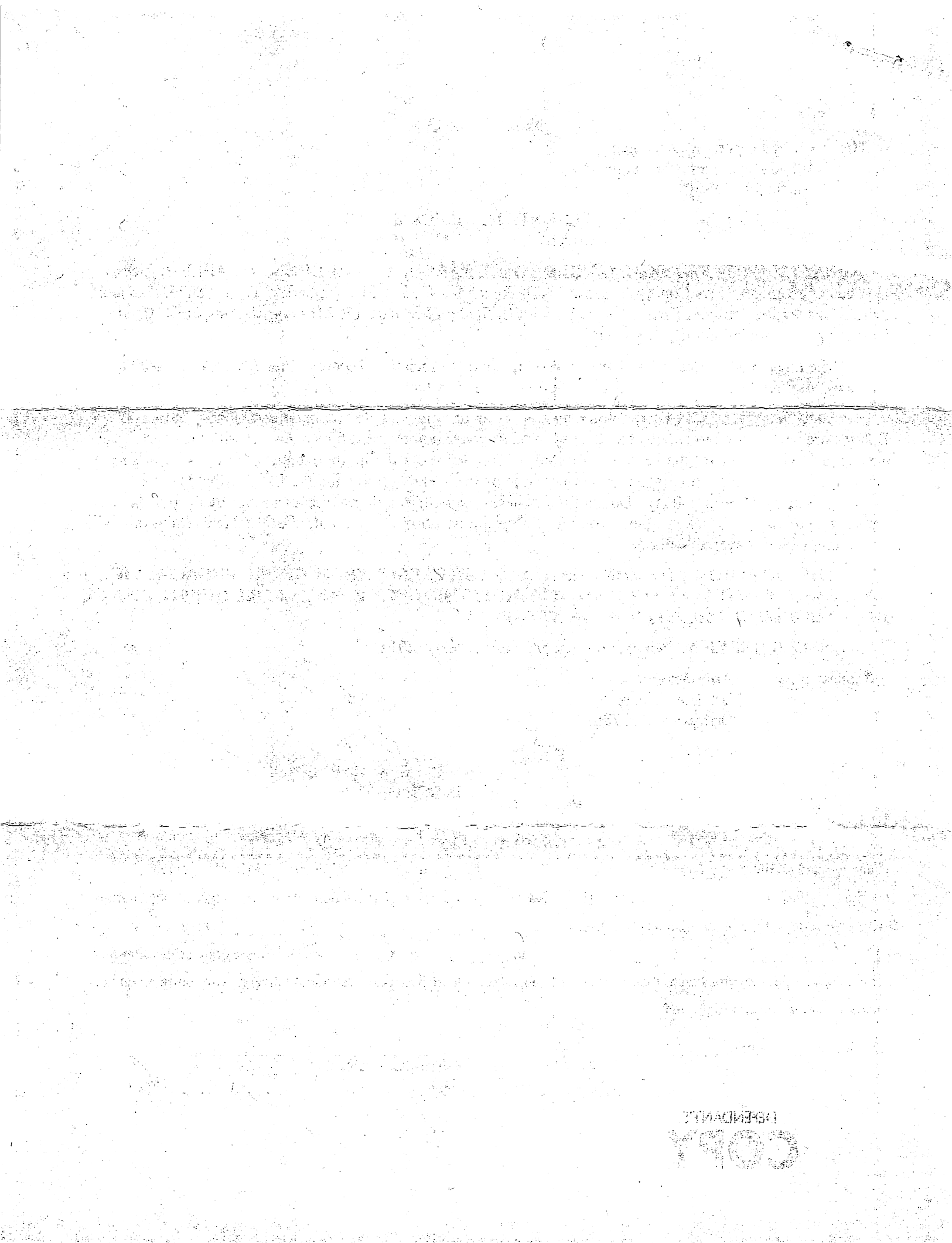
**CONSTABLE'S RETURN**

.....  
Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 201\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .M. and executed  
On the \_\_\_\_ day of \_\_\_\_\_ A.D. 201\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .M. by delivering a true copy of this citation  
with a true copy of the petition attached to Defendant, \_\_\_\_\_ in person, at  
\_\_\_\_\_, in \_\_\_\_\_ County, Texas or delivering a copy of the citation  
with a copy of petition attached to the defendant by registered or certified mail, restricted delivery, with return receipt or  
electronic return receipt requested.

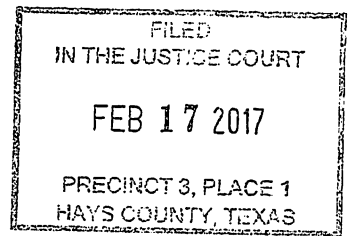
FEES: Serving one copy \$ \_\_\_\_\_

Sheriff/Constable, Pct \_\_\_\_\_  
By: \_\_\_\_\_ Deputy

**DEFENDANT'S  
COPY**



COPY  
REPRODUCED



DOCKET NO. 517-003J3

ARIEL AXELROD, Petitioner	§	HAYS COUNTY
	§	
V.	§	JUSTICE OF THE PEACE COURT 3
	§	
EL VINEDO HOMEOWNERS ASSOCIATION,	§	
INC, Respondent	§	
	§	

**PETITION FOR A COURT ORDER TO COMPEL PRODUCTION OF DOCUMENTS AND FOR AN AWARD OF FEES AND COSTS**

ARIEL AXELROD (“Petitioner”), *pro se*, hereby petitions the Court for an ORDER compelling EL VINEDO HOMEOWNERS ASSOCIATION, INC., (“Respondent” or “Association”) to produce documents previously requested under Texas Property Code §209.005 and for an AWARD of fees and costs incurred in connection with this action.

**I. PARTIES, JURISDICTION, AND VENUE**

1. Petitioner Ariel Axelrod is an individual residing in Hays County, Texas with a mailing address of 205 Napa Court, Driftwood, TX 78619.
2. Respondent El Vinedo Homeowners Association, Inc. is currently a Texas non-profit corporation. Citation may be served on its Registered Agent, Colby Property Management, at 10800 Pecan Park Blvd, Suite 340, Austin, TX 78750.
3. The Court has jurisdiction pursuant to Texas Property Code, §209.005(n).
4. Venue is proper because El Vinedo Homeowners Association, Inc. is an Association that governs the community of Vineyard Estates which is located in Precinct 3, Hays County, Texas.
5. Petitioner is an individual resident property owner in Vineyard Estates.

**II. BACKGROUND FACTS**

6. Declarant, Driftwood 323 Vineyard, LTD, by and through its general partner, DV 294 GP, LLC, appointed members of both entities to the Association’s Board of Directors (Steve Tucker

and Steven Wimberly).

7. Upon information and belief, Declarant's appointed Association Board of Directors failed to collect assessments on Declarant owned lots, in violation of the Deed Restrictions. The uncollected assessments appear to be in excess of \$150,000.

8. The Association has not held a meeting or formally proposed and adopted budgets since coming into existence.

9. Petitioner sent a request for the production of Association records and a call for an election of a non-declarant Board of Directors to the Association, by United States Postal Service certified mail, on November 10, 2016 (The Deed Restrictions triggered a call for an election in 2012 but the Board of Directors did not call for one). *See* letter at **Exhibit "A"**.

10. For close to three weeks the Association's then Registered Agent, Steve Tucker, did not sign for the letter that was sent via United States Postal Service, Certified, Return Receipt Requested.

11. On November 19, 2016, Petitioner then sent Steve Tucker an email making him aware of the letter and providing the letter in full. Steve Tucker acknowledged the receipt of the email, stating:

"Ari, I have not received notice from USPO as of yet on Letter but I will check with the local office tomorrow, and I also will check on your request. I feel with the upcoming short week for the holiday it will be to following week before I can reply for I am leaving town to be with Family."

A copy of the email and Steve Tucker's response is attached at **Exhibit "B"**.

12. Petitioner sent a follow up email on November 29, 2017. On November 30, 2016, Mr. Tucker responded:

"Ari, I never received Notice from PO but with that said I have better use of my time than to stand in Line at PO during the Christmas rush and you sent the info by Email."

A copy of the email is at **Exhibit “C”**.

13. Over the next month Steve Tucker and another Association Board Member, Nancy Wimberly, emailed back and forth with Petitioner about producing the documents but failed to produce a single document.

14. On January 3, 2017, Petitioner sent the Association the required notice before proceeding to a suit as required under Texas Property Code §209.005(p)(1)-(2). The Association's then Registered Agent, Steve Tucker, signed for the letter on January 12, 2017. *See* notice letter at **Exhibit “D”**.

15. Over the next several weeks the Association failed to produce the entirety of the requested documents. Petitioner withheld filing suit several times to allow the Association more time to produce the requested documents. As of the time this petition is filed, the Association has not produced the requested invoices and the entirety of the bank statements that include copies of canceled checks.

16. Of the documents produced there are numerous questions regarding payments from the Association to a Board Member (Steve Tucker), withdrawals in cash, money apparently held by the Developer in Driftwood 323 Vineyard, LTD, a note payable to a Board Member's company (Steve Tucker's Steve Tucker Company, Inc.), and payments made from Association accounts to cover developer expenses (sales sign and lot clearing, for example).

17. Respondent Association needs to turn over the requested invoices and checks and provide documents related to Association funds held in Developer accounts and the note payable to Board Member Steve Tucker's company, Steve Tucker Company, Inc.

### **III. PRAYER**

18. For the foregoing reasons, Petitioner requests the Court to ORDER the Association to

immediately produce the requested documents, AWARD Petitioner the fees and costs associated with filing this action, and all further relief deemed just and proper in the premises.

Respectfully submitted,

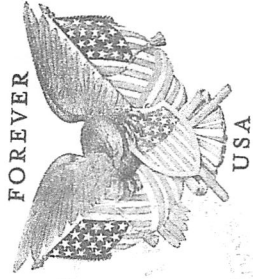
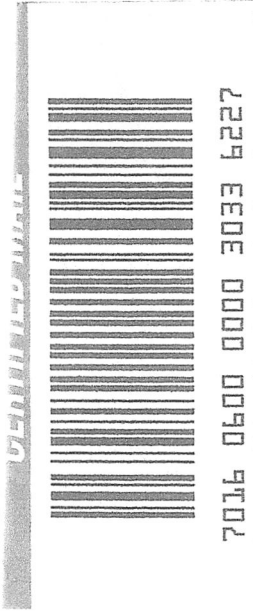


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Ariel Axelrod, *Petitioner Pro Se*  
205 Napa Ct  
Driftwood, TX 78619  
(512) 571-9054  
ariel@axelrod.us

# EXHIBIT "A"

205 MAPA CT  
DREFTWANG, TX 78619



El Vireo Homeowners Assoc. Inc  
ATTN: Mr. STEVE JACKER  
3900 AUSTIN LUMBER  
AUSTIN, TX 78749



1000

PAID 12-8  
12-14  
12-23

NIXIE 787 DC 1 0012/07/16  
RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD

UNC 787498622705 BC: 78519913205 \*0510-01289-10-42

Ariel E. Axelrod

205 Napa Court • Driftwood, TX 78619

November 10, 2016

El Vinedo Homeowners Association, Inc.  
ATTN: Mr. Steve Tucker  
3800 Allegra Lugar  
Austin, TX 78749

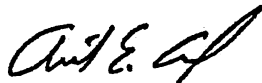
Dear Mr. Tucker,

My wife and I are recent property owners in Vineyard Estates. It has come to my attention that the Protective Period expired on June 6, 2012, five years after it was recorded in Hays County (*See* Section 4.03A of the DECLARATION OF COVENANTS, CONDITIONS, EASEMENT AND RESTRICTIONS FOR VINEYARD ESTATES ("The Restrictions"). At that time, the Declarant's appointed Board of Directors was required to arrange for an election of property owners to assume control of the Association's Board of Directors (*See* Section 4.07 of The Restrictions). I request the Association's Board of Directors make immediate arrangements for an election of a Board of Directors composed of property owners other than Declarant's appointed Board.

Since an election will be forthcoming, and to ensure those who choose to run have a better sense of what they will be signing up for, copies of the Association's books and records must be made available. Therefore, in accordance with Texas Property Code §209.0051(c) as well as Section 4.04(c) of The Restrictions, I request copies of all association books and records, to include, but not limited to, Articles of Incorporation, Rules, Bylaws, financial records, property assessments, bank statements, deposit records, invoices, resale certificates, annual financial report/statement, audits, and agendas and minutes for meetings of the Association. Please let me know when copies of these records will be available. I am more than happy to pick them up to save the Association the expense of delivering them.

Should you have any questions, you may reach me at (512) 571-9054.

Sincerely,



Ariel E. Axelrod  
Lieutenant Colonel, U.S. Army, Retired

# **EXHIBIT "B"**

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**Follow Up**

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**Steve Tucker** <stuckerco@gmail.com>

Sun, Nov 20, 2016 at 4:41 F

To: Ari Axelrod &lt;ari@axelrod.us&gt;

Cc: Steve Wimberly &lt;wimberlysteve@yahoo.com&gt;, Nancy Wimberly &lt;nwimberly@tipsiron.com&gt;

Ari, I have not received notice from USPO as of yet on Letter but I will check with the local office tomorrow, and I also will check on your request. I feel with the upcoming short week for the holiday it will be to following week before I can reply for I am leaving town to be with Family.

Steve Tucker

Sent from my iPad

On Nov 19, 2016, at 7:10 PM, Ari Axelrod <ari@axelrod.us> wrote:

Steve,

I wanted to follow up and thank you for taking care of the rock wall. It has been an eye sore for many since before we moved to Vineyard Estates.

I also wanted to follow up on the letter that has been waiting for you since USPS left a notice for you to pick up a certified letter on November 12, 2016. I'm going to assume that you are not avoiding signing for the letter and I'll include its contents here:

November 10, 2016

El Vinedo Homeowners Association, Inc.

ATTN: Mr. Steve Tucker

3800 Allegra Lugar

Austin, TX 78749

Dear Mr. Tucker,

My wife and I are recent property owners in Vineyard Estates. It has come to my attention that the Protective Period expired on June 6, 2012, five years after it was recorded in Hays County (See Section 4.03A of the DECLARATION OF COVENANTS, CONDITIONS, EASEMENT AND RESTRICTIONS FOR VINEYARD ESTATES ("The Restrictions")). At that time, the Declarant's appointed Board of Directors was required to arrange for an election of property owners to assume control of the Association's Board of Directors (See Section 4.07 of The Restrictions). I request the Association's Board of Directors make immediate arrangements for an election of a Board of Directors composed of property owners other than Declarant's appointed Board.

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Should you have any questions, you may reach me at (512) 571-9054.

Sincerely,

< original signed >

Ariel E. Axelrod

Lieutenant Colonel, U.S. Army, Retired

<Vineyard\_HOA\_Election\_Request\_Letter.pdf>

# EXHIBIT "C"

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## Follow Up

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Ari Axelrod <ari@axelrod.us>  
To: Steve Tucker <stuckerco@gmail.com>

Sat, Nov 19, 2016 at 7:10 F

Steve,

I wanted to follow up and thank you for taking care of the rock wall. It has been an eye sore for many since before we moved to Vineyard Estates.

I also wanted to follow up on the letter that has been waiting for you since USPS left a notice for you to pick up a certified letter on November 12, 2016. I'm going to assume that you are not avoiding signing for the letter and I'll include its contents here:

November 10, 2016

El Vinedo Homeowners Association, Inc.

ATTN: Mr. Steve Tucker

3800 Allegra Lugar

Austin, TX 78749

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Since an election will be forthcoming, and to ensure those who choose to run have a better sense of what they will be signing up for, copies of the Association's books and records must be made available. Therefore, in accordance with Texas Property Code §209.0051(c) as well as Section 4.04(c) of The Restrictions, I request copies of all association books and records, to include, but not limited to, Articles of Incorporation, Rules, Bylaws, financial records, property assessments, bank statements, deposit records, invoices, resale certificates, annual financial report/statement, audits, and agendas and minutes for meetings of the Association. Please let me know when copies of these records will be available. I am more than happy to pick them up to save the Association the expense of delivering them.

Should you have any questions, you may reach me at (512) 871-9054.

Sincerely,

< original signed >

Ariel E. Axelrod

Lieutenant Colonel, U.S. Army, Retired

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 **Vineyard\_HOA\_Election\_Request\_Letter.pdf**  
72K

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## Follow Up

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**Steve Tucker** <stuckerco@gmail.com>

Wed, Nov 30, 2016 at 9:41

To: Ari Axelrod <ari@axelrod.us>

Cc: Steve Wimberly <wimberlysteve@yahoo.com>, Nancy Wimberly <nwimberly@tipsiron.com>

Ari, I never received Notice from PO but with that said I have better use of my time than to stand in Line at PO during the Christmas rush and you sent the info by Email.

I am book for the Balance of this week and first of next week any time after Wednesday will work to meet, I think a call for elections can be after the Holiday when people and back to their normal routine

Steve Tucker

[Quoted text hidden]

--

Steve Tucker,

Cell 512-658-1950

Office 512-658-1950

# **EXHIBIT "D"**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EL VERDEO HHA, INC.  
3000 ALLEGRA LANE  
AUSTIN, TX 78749



9590 9402 2445 6249 5272 48

2. Article Number (Transfer from service label)

7016 2710 0000 9471 5297

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*[Handwritten Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

*[Handwritten Name]*

C. Date of Delivery

*[Handwritten Date]*

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

lected Delivery

Domestic Return Receipt

# Ariel Axelrod

205 Napa Court • Driftwood, TX 78619

January 3, 2017

El Vinedo Homeowners Association, Inc.  
ATTN: Mr. Steve Tucker  
3800 Allegra Lugar  
Austin, TX 78749

Dear Mr. Tucker,

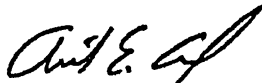
On November 10, 2016, I sent the El Vinedo Homeowners Association, Inc. ("the Association") a request for HOA financial records and a call for an election that is more than four years overdue (A copy of the November 10, 2016 letter is attached). The HOA financial records have not been produced and no action has been taken on the call for elections.

Pursuant to Texas Property Code §209.005(p)(1)-(2), this letter serves as ten days' notice that, if the Association does not produce copies of the requested financial records, I intend to file a lawsuit to compel production of the requested HOA financial records as well as reimbursement of the costs incurred in filing and prosecuting the lawsuit. The lawsuit may be filed against the Association collectively and the Board Members individually.

The records requested, in accordance with Texas Property Code §209.005(c) as well as Section 4.04(c) of the DECLARATION OF COVENANTS, CONDITIONS, EASEMENT AND RESTRICTIONS FOR VINEYARD ESTATES, are copies of all association books and records, to include, but not limited to, Articles of Incorporation, Rules, Bylaws, financial records, property assessments, bank statements, deposit records, invoices, resale certificates, annual financial report/statement, audits, and agendas and minutes for meetings of the Association. Please let me know when copies of these records will be available. I am more than happy to pick them up to save the Association the expense of delivering them.

Should you have any questions, you may reach me at (512) 571-9054 or by email at [ariel@axelrod.us](mailto:ariel@axelrod.us).

Sincerely,



Ariel Axelrod  
Lieutenant Colonel, U.S. Army, Retired

Attachment: November 10, 2016 Letter