

2017 HOA Legislative Update/Proposed Legislation

HOUSE BILLS

HB 2146: HOAS; DISCLOSURE DOCUMENTS; AGENT

This bill would impact both planned communities and condominiums and would amend A.R.S. §§ 33-1806 and 33-1260 regarding the Association's resale disclosure statement. This bill would require that if the purchaser has an authorized agent that the Association deliver the resale disclosure statement to BOTH the purchaser and the authorized agent.

Sponsor: Representative Weninger

HB 2157: PRIVATE PROPERTY ACCESS; RIGHTS-OF-WAY

This bill expands the current text of A.R.S. § 33-2401 and would require the State of Arizona (or political subdivision of the State) to grant individuals a right of way across State or Federally owned land in certain circumstances. For example, the bill would require the State to provide an individual with a right of way over State or Federal land if the individual's private property is completely surrounded by land owned by the State or the Federal Government, and it is necessary to cross State land to gain access to the individual's private property.

Sponsor: Representative Bowers

HB 2158: TAX LIEN FORECLOSURES; SUBDIVISIONS; EXEMPTION

This proposed amendment is to the notice requirement for subdividers who subdivide property into six or more parcels. The changes to be enacted through the amendment primarily are stylistic, except that notice now is required from subdividers of properties foreclosed through the tax lien process. The amendment specifically exempts out properties where the Treasurer's Deed is not recorded unless the tax lien purchaser actually intends to subdivide the parcel obtained through a tax lien foreclosure action.

Sponsor: Representative Shope

HB 2165: AUTHORIZED THIRD PARTIES; ELECTRONIC TITLE

This proposed bill would amend A.R.S. §§ 28-2604 and 28-5101 relating to the Department of Transportation. This proposed bill would allow for the Director of the Department of Transportation to establish an electronic system for recording certificate of title information no sooner than 2018 and no later than 2023. The proposed bill also sets forth that the Director may establish rules for when the Department is required to issue a paper certificate of title.

Sponsor: Representative Campbell

HB 2321: HOAS; CUMULATIVE VOTING; PROHIBITION

This bill would amend both A.R.S. § 33-1250 (Condominium Act) and § 33-1812 (Planned Communities Statutes). As proposed, members of planned communities or condominium associations would no longer be permitted to utilize cumulative voting in casting ballots, regardless of whether cumulative voting is permitted under the non-profit corporations act or the association's governing documents.

Sponsor: Representative Clark

HB 2411: HOAS; OPEN MEETINGS

With HB 2411, an association's board of directors, committees and the membership are permitted to take action only if there is a quorum present for the board, committee or membership meeting and the meeting is held according to statutory open meeting requirements. The Association is prohibited from requiring advanced notice for a member to video or audio record a meeting. If the board of directors meets in executive session, the board of directors is required to provide an agenda prior to the meeting that includes a description of the specific exemption regarding the basis for that portion of the meeting to be held in executive. The bill also grants the Association the specific authority to discuss violations and assessment delinquencies in executive session; however, if the board of directors discusses violations and assessment delinquencies in executive session, it must report in the open portion of the meeting; "...the number of violation notices sent and the dollar amounts of any delinquent assessments occurring since the last meeting..."

Sponsor: Representative Lovas

HB 2419: HOMEOWNERS ASSOCIATION; DISCLOSURE DOCUMENTS; FEES

This bill requires that the maximum disclosure fee charged by the Association or its Managing Agent include the cost of delivery.

Sponsor: Representative Leach

HB 2496: HOAS; BOARD DUTIES; ACKNOWLEDGMENT

If HB 2496 is successful, then within 30 days after election or appointment to an association's board of directors, each board member will be required to sign a certification to the association's secretary that states the following: "*I HEREBY ACKNOWLEDGE THAT I HAVE READ THE DECLARATION, BYLAWS AND RULES OF THE ASSOCIATION AND I WILL UPHOLD THOSE DOCUMENTS AND POLICIES TO THE BEST OF MY ABILITIES IN DISCHARGING MY FIDUCIARY RESPONSIBILITY TO THE ASSOCIATION.*"

Sponsor: Representative Leach

SENATE BILLS

SB 1007: HOMEBASED BUSINESS; OPERATIONS; EMPLOYEES

This bill proposes an amendment to A.R.S. § 11-820 to add a restriction preventing all ordinances authorized by the chapter that regulates owners of home-based business from placing any restrictions on those owners pertaining to limiting the traffic, parking, or delivery generated by the home business or having more than one client on the property at one time (so long as that activity does not cause on-street parking congestion or a substantial increase of traffic through a residential area). The ordinances also cannot restrict owners from employing residents of the primary dwelling, immediate family members or 1-2 individuals who aren't residents or immediate family members. The amendment also defines immediate family members. This bill does not apply to an association's business use restrictions but we are monitoring it to ensure that it remains this way.

Sponsor: Senator Farnsworth

SB 1060: HOAS; DISPUTE PROCESS

This bill would amend A.R.S. §§ Sections 12-1242(D) and § 33-1803(E) to change the reference to an owner's ability to petition for an administrative hearing in the Department of Fire, Building, and Life Safety pursuant to § 41-2198.01 to reflect that petitions now must go to the State Department of Real Estate pursuant to § 32-2199.01.

Sponsor: Senator Griffin

SB 1072: ADMINISTRATIVE DECISIONS; SCOPE OF REVIEW

This bill seeks to amend A.R.S. § 12-910(E). If passed, this bill would change the standard of review for courts reviewing agency action and specifically requires the court to "decide all questions of fact and law," including the agency's interpretation of a law or provision, and the reviewing court does not have to give deference to prior determinations by the agency. The current version of the statute requires the court to affirm agency decisions unless the ruling was unsupported by substantial evidence, contrary to law, arbitrary and capricious, or an abuse of discretion.

Sponsor: Senator Petersen

SB 1113: HOAS; ARTIFICIAL GRASS BAN PROHIBITED

With SB 1113, if an Association allows grass, then it cannot ban artificial grass on any property. The Association may, however, set reasonable guidelines for the installation and appearance of the artificial grass, including removal of the artificial grass if it causes a health or safety issue (after the owner has been given an opportunity to cure). If an owner brings a lawsuit against an Association regarding this issue, the prevailing party shall be awarded attorneys' fees and costs.

Sponsor: Senator Kavanagh

SB 1175: REAL ESTATE TRANSFER FEES; DEFINITION

SB 1175 proposes an amendment to A.R.S. § 33-442, which prohibits transfer fees. The proposed amendments expands the definition of Association to include nonprofit organizations qualified under section 501(c)(3) or Section 501(c)4 of the United States Internal Revenue Code.

Sponsor: Senator Lesko

SB 1240: HOAS; STREETS; AUTHORITY

The proposed amendment will prohibit an association from regulating any roadway dedicated to or owned by a public entity ("public roadway") regardless of when the association's declaration was recorded. In other words, the restriction on an association regulating a public roadway will no longer apply only to those associations that have a declaration recorded after December 31, 2014. However, the amendment would allow an association to regulate a public roadway in the community if the governmental entity that holds title to the roadway or to which the roadway has been dedicated formally grants the association authority to regulate the public roadway.

Sponsor: Senator Kavanagh

SB 1255: GUEST REMOVAL; SPECIAL DETAINER ACTION

This bill proposes to modify the existing landlord tenant statutes that allow removal of a tenant who overstays a lease period to include a guest who knowingly remains in leased premises without permission. The landlord or the legal tenant may file a special detainer action with the Court to remove the unwanted guest. This proposed amendment does not give an Association the right to remove a guest of a tenant unless the Association is the landlord. Attorneys' fees and costs are awarded to the prevailing party.

Sponsor: Senator Griffin

SB 1288: HOAS; BOARD CONFLICTS

This bill alters the language of A.R.S § 33-1243 and A.R.S. § 33-1811. First, the transparency requirements of the statute will no longer apply during the period of declarant control. Directors are required under the current statute to declare a conflict of interest if any contract, decision, or other action taken by the Board of Directors will benefit a laundry list of parties who have a connection to that Director. The bill will expand that list to include the employers and employees of a Director. Finally, a Director who declares his or her conflict in an open meeting as required by A.R.S § 33-1243 will no longer be able to vote on the issue.

Sponsor: Senator D. Farnsworth

SB 1289: HOAS; HEARINGS; ATTORNEY FEES

This bill amends the language of A.R.S § 12-341.01 and A.R.S. § 32-2199.01. First, the bill removes the ability of an administrative law judge to award attorney fees to the successful party in a contested action that arises out of contract pursuant to A.R.S § 12-341.01. Second, the bill amends A.R.S. § 32-2199.01 to now remove the ability of an administrative law judge or a Commissioner to award attorney fees pursuant to the governing documents between an association and its members.

Sponsor: Senator D. Farnsworth

SB 1358: MUNICIPALITIES; COUNTIES; RENT CONTROL; SENIORS

Currently, the State of Arizona has determined that the imposition of rent control policies with respect to private residential housing is a matter of statewide concern. As such, the State of Arizona prohibits cities, towns, and counties from passing ordinances regarding rent control. SB 1358 would slightly modify existing law to permit cities, towns, and counties to pass rent control ordinances applicable to residential homes and mobile home spaces rented to an individual 62 years of age or older.

Sponsor: Senator Hobbs

SB 1371: DELINQUENT PROPERTY TAXES; COMMON AREAS

The proposed amendment to A.R.S. § 42-17153 will add a subsection C which will provide that those property taxes assessed against common areas that have been assigned common area value pursuant to A.R.S. § 42-13401 through 42-13404 will be the corporate liability of the association as well as a lien against the property on which the tax is assessed. A.R.S. § 42-18121.02 reiterates what will become subsection C of A.R.S. § 42-17153 and provides for how delinquent taxes assessed against common area shall be treated. (1) If a lien for taxes against the common area is sold to a purchaser at the annual tax lien sale, purchase of the lien will satisfy and extinguish it; (2) Thereafter the Treasurer will be required to remove the lien; (3) The tax lien redemption and foreclosure provisions will not apply to taxes purchased under this section; and (4) The purchaser's only remedy will be to sue the association to recover the amount of the delinquent taxes, interest, penalties, and charges related to the lien, plus interest thereon.

Sponsor: Senator Petersen

SB 1400: HOAS; ASSESSMENT LIENS; FORECLOSURE

The proposed amendments to A.R.S. § 33-1256 and A.R.S. § 33-1807 are substantively similar. The proposed amendment will split subsection A of both statutes into subsections A and B; subsection A will deal with foreclosure of the assessment lien and subsection B will address the lien and an owner's personal obligation

for assessments. Subsection A will be changed to require an owner to be delinquent in the payment of assessments for either two (2) years or in the amount of \$2,500 before an association can foreclose its assessment lien. Further, subsection A will require the association to offer the owner a "reasonable payment plan" for assessments, late fees, reasonable collections fees, and reasonable attorneys' fees/costs prior to attempting to foreclose the assessment lien or otherwise collect such monies. Subsection B will have a similar requirement to offer a repayment plan before the association obtains any judgment to collect any monies. The association will be obligated to document the payment plan offers.

Sponsor: Senator D. Farnsworth

SB 1401: HOAS; MANAGERS; DUTIES; GRATUITIES

If passed, SB 1401 would create identical provisions within the Arizona Condominium Act and the Arizona Planned Community Statutes imposing significant new requirements. First, SB 1401 would prohibit the Association's employees and independent contractors, specifically including community managers, from soliciting, receiving, or accepting any undisclosed fee, compensation, commission, or gratuity from any Association vendor (as more thoroughly defined). Second, SB 1401 would require community managers to be familiar with the Association's governing documents and act in good faith, with the Association's authorization, and in compliance with the governing documents and applicable law (while community managers typically have a professional responsibility to perform in accordance with the foregoing, SB 1401 would create statutory authority). Third, SB 1401 would prohibit community managers from requiring the Association to indemnify or otherwise defend the community manager from claims or complaints arising out of the community manager's actions on behalf of the Association. Lastly, community managers who violate the law, as amended, are liable for damages, could be ordered to comply with the Association's governing documents or applicable law, and could be subject to an adverse attorneys' fee award.

Sponsor: Senator D. Farnsworth

SB 1402: HOAS; IMPROVEMENT DISTRICTS; ZONING

If passed, SB 1402 would require the planning agencies of municipalities and counties to allow developers to create single-family residential communities that "do not include property held in common ownership." Instead, developers could create single-family residential communities to be included in an improvement district "only for the limited purpose of owning, operating and maintaining any detention and retention basins, landscaping, open spaces, parks, entryways, street rights-of-way, recreational facilities and other improvements for the benefit of the private property owners" (although the foregoing statement appears to be in direct contrast to the previous statement, i.e., "do not include property held in common ownership"). Improvement districts are special taxing districts created to improve the quality of certain public or municipal services. SB 1402 proposes to create a defined alternative to common-interest and planned communities.

Sponsor: Senator D. Farnsworth

SB 1403: MUNICIPALITIES; COUNTIES; TINY HOMES; CODES

SB 1403 requires the municipalities (through A.R.S. § 9-810) as well as the Board of Supervisors (through A.R.S. § 11-861) to adopt residential building code requirements for "tiny home construction." The Bill defines a "Tiny Home" as a single-family dwelling that is not more than four hundred square feet.

Sponsor: Senator D. Farnsworth

SB 1404: COMMUNITY FACILITIES DISTRICTS; AMENDMENTS

A "community facilities district" is a municipally or county-created district to provide enhanced municipal or public services to property located within the district area. Owners of at least 25% of the land area proposed to be included within a community facilities district may submit a signed petition detailing and applying for the creation of such a district. Property proposed to be included within the community facilities district is not required to be contiguous. SB 1404 contains numerous specific requirements applicable to the application, formation, and appeal process of such community facilities districts.

Sponsor: Senator Lesko

SB 1429: HOMEOWNERS' ASSOCIATIONS; ELECTRONIC RECORDS; FEES

This bill amends the language of A.R.S § 33-1258 and A.R.S. § 33-1805. The term 'Member' in A.R.S § 33-1258 is changed to 'Unit Owner.' The bill further limits the ability of associations to charge fifteen cents per page to only paper records. The bill also adds new requirements to the provision of electronic records by an association:

- The association may not charge a fee for the provision of nine or less megabytes of electronic data.
- The association may charge a fee of no more than five dollars for each additional nine megabytes of electronic data.
- The association shall have ten business days to provide electronic copies of requested records.

Sponsor: Senator D. Farnsworth

Several of these proposed bills hurt our communities. Please email your senator and/or representative and let them know that you are not in favor of several of these bills and enjoy the benefits of living in an HOA. Some of the bills do benefit living in a planned community however we need to let our legislators know we are not in favor of the bills that adversely affect our communities and negatively affect our property values.

To find your legislators go to www.azleg.gov then click on members under the senate and house tabs at the top of the page.