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2006 LEGISLATIVE UPDATE

House Bill 2824

A. Inspection of Records by Members (amends A.R.S.¹ §10-11602): The portion of Arizona's Non-Profit Corporation Act that pertains to inspection of corporate records by members does not apply to Planned Communities and Condominiums. Generally, an Association member is entitled to examine all financial and other records of the Association.

B. Notice of Violation (amends A.R.S. §33-1242 and §33-1803²): Procedure for informing an owner that his/her property is in violation of a requirement of the Association's governing documents:

1. An owner receiving such a notice may provide the Association with a written response by certified mail within 10 business days after the date of the notice. The owner's response must be sent to the address contained in the Notice or in the recorded Notice of Association [see A.R.S. §33-1256(J) and §33-1807(J)].

2. Within 10 business days after receipt of the owner's response, the Association shall respond with a written explanation that must provide at least the following information unless previously provided in the Association's original notice of violation:

- (a) The provision of the governing documents that has allegedly been violated.
- (b) The date of the violation or the date the violation was observed.
- (c) The first and last name of the person(s) who observed the violation.

¹A.R.S. = Arizona Revised Statutes

²Condominium Act = A.R.S. §33-1201 and following
Planned Communities Act = A.R.S. §33-1801 and following

(d) The process the owner must follow to contest the notice (see #1 above).

3. Unless the information required in Paragraph 2 above is provided in the Association's original notice of violation, the Association may not proceed with any enforcement action, including the collection of attorney fees, before or during the time limits prescribed for the exchange of information between the Association and the owner.

C. Administrative Adjudication of Complaints. An owner or the Association may petition the Arizona Department of Building and Fire Safety for a hearing concerning violations of the governing documents or violations of the statutes that regulate Condominiums or Planned Communities. A petition may be filed with the Department at any point in the process described in Section B above pertaining to required notice of violation(s).

1. Petitioner shall file a petition with the Department and pay a non-refundable filing fee in an amount to be established by the Director of the Department. The Department shall provide a form for the petition.

2. The petition needs to list the complaints and must be signed by the petitioner(s).

3. The Department shall mail a copy of the petition by certified mail to the Respondent, who must file a response within 20 days of mailing of the petition, stating any cause there is why the petition should be dismissed.

4. The Director of the Department (or his/her designee) will review the petition and, if appropriate, refer the petition to the Office of Administrative Hearings. The Director may dismiss a petition if the disputed issue(s) have been resolved by the parties.

5. The Director will issue a default decision if the respondent fails to answer.

6. The right to an administrative hearing does not apply to disputes between owners to which the Association is not a party, nor to any construction defect actions.

7. The Association may be represented at the hearing by a corporate officer, employee or contractor of the corporation who is not an attorney, if the representative has specific authority to represent the Association and such representation is not the representative's primary duty to the corporation, but is secondary or incidental to the representative's duties relating to the management or operation of the Association. [However, representation at the hearing by a contractor may constitute the unauthorized

practice of law. It is our information that property managers and other contractors will not be able to represent Associations at these hearings.]

8. The administrative law judge may order any party to abide by the governing documents or contract provision at issue and may levy a civil penalty on the basis of each violation.

9. All filing fees and civil penalties collected will be deposited in a Condominium and Planned Community Hearing Office fund. These funds will be used to reimburse the actual costs of the Office of Administrative Hearings, which will conduct all hearings on petitions filed. On or before 12/1/07, the joint legislative budget committee will review and make recommendations to the legislature regarding the filing fees charged for an administrative hearing, and shall recommend a level of filing fee appropriate to assure the hearing office program is fiscally sound and self-supporting.

10. If the petitioner prevails, the respondent must reimburse the filing fee the petitioner paid.

11. The decision of the administrative law judge is a final administrative decision and is enforceable through contempt of court proceedings, and may be appealed to the Pima County Superior Court.

Senate Bill 1007

A. Notice of Violation (see HB 2824).

B. Open Meeting Law (amends A.R.S. §33-1248 & §33-1804) : Adds as an exception to the open meeting law: Board discussions pertaining to “records of the Association directly related to personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association.”

C. Review of Records (amends A.R.S. §33-1248; HB 2824 adds this amendment to A.R.S. §33-1805): Association records may be withheld from a member’s request for inspection if the records directly relate to personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association. This exception is in addition to an Association’s right to withhold records pertaining to:

1. Privileged communication between an attorney for the Association and the Association.

2. Pending litigation (“contemplated” litigation removed as an exception).
3. Meeting minutes or other records of a session of a Board meeting that is not required to be open to all members pursuant to A.R.S. §33-1248 or §33-1804.
4. Personal, health or financial records of a an individual Association member, an individual employee of the Association, or an individual employee of a contractor for the Association.
5. Job performance of, compensation of, health records of or specific complaints against an individual employee of a contractor of the Association who works under the direction of the Association.

D. Charges to Members for Review of Records (amends A.R.S. §33-1258 and §33-1805): An Association cannot charge a member for making books and records available for review. An Association has 10 business days to fulfill a member’s (or member’s representative’s) request for records examination and also has 10 business days to comply with a member’s (or member’s representative’s) request for copies of any records. An Association may not charge more than 15 cents per page for copies.

E. Foreclosure of Assessment Lien (amends A.R.S. §33-1256 and §33-1807): An Association can foreclose its assessment lien only if there is a one-year delinquency or \$1,200 owed (excluding collection fees, attorney fees and costs, and late charges), whichever occurs first.

Senate Bill 1055

A. Outdoor Display of Flags: (Amends A.R.S. §33-1261 and §33-1808): An Association cannot prohibit outdoor display of any of the following on a member’s private property, so long as the flag is displayed in accordance with the federal flag code:

- (1) American flag;
- (2) Official flag (or a replica) of: (a) the U.S. Army, Navy, Marine Corps, or Coast Guard; (b) the POW/MIA flag; (c) the Arizona state flag; or (d) an Arizona Indian nations flag.

B. The Association shall adopt reasonable rules and regulations regarding the placement and manner of display of any of the above-mentioned flags.

C. Political Signs: Adds that any provision of the governing documents of an Association does not override this statute, which does not allow an Association to prohibit the indoor or outdoor display of a political sign on an Association member's property.

Senate Bill 1138

Conveyance of Real Property (applies to condominiums only, adds A.R.S. §33-1252.01): A condominium association can convey real estate that is held as an asset of the Association and is not a common element, if members entitled to cast at least 80% of the votes in the Association, or any larger percentage the Declaration specifies, agree to the conveyance. This does not apply to any real estate an Association acquires in an assessment lien foreclosure.

House Bill 2205

Parking by Employees of Municipal Utilities in Associations (applies to Planned Communities only; amends A.R.S. §33-1809): Despite any provision in an Association's governing documents, an Association cannot prohibit a resident from parking a motor vehicle on a street or driveway if all of the following apply:

(1) the vehicle is required to be available at designated periods at the residence as a condition of the resident's employment;

(2) the resident is employed by a municipal utility and is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electric or water infrastructure;

(3) the vehicle has a gross vehicle weight rating of 20,000 pounds or less and is owned by the municipal utility; and

(4) the vehicle bears an official emblem or other visible designation of the corporation.

Arizona Legislature: <http://www.azleg.state.az.us/> (For retrieving copies of the bills and reviewing the history and overview of the bill)

Effective Date of Laws: September 21, 2006.