

SUMMARY OF 2011 ARIZONA HOA LEGISLATION

(as of 3/24/11)

HOA BILLS THAT STILL ARE ACTIVE IN THE ARIZONA LEGISLATURE. [Note: None of these bills has been passed into law yet. To see the full text of the bill, to verify status, and to get contact information for your legislators to voice your opinion on these bills, go to: www.azleg.gov].

A. HOUSE BILLS

HB2140: FIREARMS REGULATION. A Planned Community association may not restrict firearms; except that it can require that all residents comply with all federal and state laws regarding firearms. No firearms are permitted in the “management office” at any time.

Sponsor: Representative Harper

Status: Passed out of House Committee of the Whole.

HB2245: RECORDING BOARD MEETINGS. In a Planned Community or Condominium, would amend the open meeting law to allow owners to record board of directors meetings with a tape recorder or a video recorder. A board can adopt reasonable rules and regulations regarding the taping, but may not prohibit it.

Sponsor: Representative Stevens

Status: Passed out of House and is in Senate Rules Committee.

HB2441: CC&RS AMENDMENTS. Despite more restrictive amendment requirements in the CC&Rs, Planned Community & Condominium CC&Rs can be amended if 2/3rds of the votes submitted are in favor of the amendment. The quorum requirement is at least 50% of the owners.

Sponsor: Representative Montenegro [introduced bill on behalf of Community Association Institute's Legislative Action Committee]

Status: Passed in the House on 2/24/11 and moved out of Senate Government Reform Committee on 3-23-11 with recommendation to pass. Now has to pass out of Senate Rules Committee.

HB2545: RENTAL RESTRICTIONS. Condominiums and Planned Communities cannot prohibit leasing or rental of units. The House Committee amended the bill to add a prohibition against an association requiring a copy of the lease or charging a leasing fee.

Sponsor: Representative Heinz

Status: Passed out of Committee and still has not passed out of House, may not progress further.

HB2609: OPEN MEETING LAW. This bill was amended with a “strike everything amendment”. It formerly addressed signs and now has revisions to the open meeting law in the Condominium and Planned Community Acts. Seeks to add committee meetings to open meeting requirements; adds violation hearings to matters that can be heard in closed meeting; requires agenda be made available to all meeting attendees.

Sponsor: Representative Harper

Status: Passed out of House, passed Senate Government Reform Committee, and is awaiting Senate Third Reading.

HB2717: MONETARY PENALTIES & ATTORNEY FEES. A Condominium or Planned Community cannot collect attorney fees associated with enforcement against a violation of the governing documents if the fees exceed twice the amount of the penalty assessed for the violation. Also, the association is prohibited from levying a late fee on any monetary penalty and cannot charge a penalty of more than \$50 for a single violation or an ongoing violation. Flag statute is modified to prohibit an association from charging a fee for indoor or outdoor placement of a “for sale” sign that otherwise complies with association rules and state statutes, and the penalty for an association violating this provision is the loss of its lien rights for six months.

Sponsor: Representative Carter

Status: Passed House, passed Senate Government Reform Committee with amendment, and is still pending in Senate Rules Committee.

B. SENATE BILLS

SB1148: ADMINISTRATIVE HEARINGS FOR DISPUTES: Disputes against Planned Community and Condominium associations can again be filed with the State Dept. of Fire, Building and Life Safety and heard by administrative law judges. Rulings by an administrative law judge are subject to judicial review. This bill attempts to overcome legal insufficiencies of former process that was declared unconstitutional by the Maricopa County Superior Court, as affirmed by the Arizona Court of Appeals.

Sponsor: Senator Biggs

Status: Passed the Senate on 02/10/11, and passed House Government Committee and is still pending in House Rules Committee.

SB1149: DOCUMENT PREPARATION FEES. The fee charged by Planned Communities and Condominiums for preparation of disclosure information and documents to a prospective purchaser is limited to a total of \$400.00. Currently, associations may charge a "reasonable" fee. If the disclosure information is not provided within 10 days after request, the lien for any unpaid assessment then due against the property is extinguished. The association may charge a fee of up to \$200 for transfer of property by initial or forced sale without notice. The association may charge a “rush fee” of up to \$100 if rush services are required to be performed within 72 hours. The association may charge a document update fee of up to \$50 if 30 days or more have passed since the date of the original disclosure documents. There is a provision for increases of up to 20% each year, and the association may charge the same fee if the documents are produced in paper or electronic format.

Sponsor: Senator Biggs

Status: Passed Senate and awaiting action in House Committee of the Whole.

SB1326: FLAGS & FLAGPOLES: In Condominiums and Planned Communities, an association may not prohibit the display of the “Gadsden Flag” along with the the other protected flags. The Gadsen Flag is the "Don't Tread on Me" flag. In Planned Communities, an association can limit the number of flags to no more than two at once, and can limit the height of the flagpole to no more than the height of the rooftop of the home. The association must allow a flagpole in the front or back yard.

Sponsor: Senator Antenori [lives in Green Valley, Pima County]

Status: Passed Senate, passed House Government Committee and pending in House Rules Committee.

SB1468: CONSTRUCTION DEPOSITS: Planned Communities or Condominium associations that have enacted design guidelines or other similar rules are prohibited from requiring monetary deposits as security for compliance with those rules.

Sponsor: Senator Gould

Status: Passed Senate on 2/22/11, passed House Government Committee, still pending in House Rules Committee.

SB1537: AWNINGS. Planned Communities and Condominiums cannot prohibit the installation or use of awnings that are intended to act as an energy saving device. The association may adopt reasonable rules governing aesthetics, dimensions and placement, external appearance and definition. Courts must award reasonable attorney fees and costs to an owner who substantially prevails in an action against the association for violating this statute.

Sponsor: Senator Melvin [lives in SaddleBrooke, Pinal County, AZ]

Status: Passed Senate, assigned to House Government Committee.

SB1540: POLITICAL FLYERS & PETITIONS: It is a class 2 misdemeanor to knowingly remove, alter or deface political mailers, handouts, flyers, or other printed materials of a candidate that are delivered by hand to a residence between 45 days prior to the primary election and 7 days after the general election. Homeowners associations cannot prohibit door-to-door political solicitations, and cannot prohibit the circulation of political petitions, except from sunset to sunrise.

Sponsor: Senator Melvin

Status: Passed Senate, passed House Government Committee, pending in House Rules Committee.

II. BILLS THAT WERE INTRODUCED BUT ARE NO LONGER ACTIVE.

HB2123: MAINTENANCE OF FORECLOSED PROPERTIES: If a county or municipality receives a notice of pending foreclosure on a residential property within its jurisdiction, it may inspect the exterior of the property and send notice to the beneficiary of the deed of trust to remove rubbish, trash or items (including structures) that constitute a public health risk. If the beneficiary is properly noticed, it becomes responsible via lien to pay any costs or assessments related to the clean-up and may not sell the property until a release of lien is recorded.

Sponsor: Representative Patterson

HB2124: LIMITATION ON FORECLOSURES: If property owner receives a notice of foreclosure sale (trustee's sale), the owner may deliver an affidavit to the trustee containing specified information. Upon receipt, the trustee is required to postpone the trustee's sale of the property for at least 60 days, during which time the owner may negotiate revisions to the term of the loan. During the postponement period, the owner must make mortgage payments in a mutually agreeable amount to the trustee; otherwise the stay of foreclosure is terminated. Expires in 2014.

Sponsor: Representative Patterson

HB2142: REGISTRATION OF HOMEOWNERS ASSOCIATIONS: Associations must register with the Secretary of State instead of with the County Recorder. The Secretary of State's office must post information about associations on its website in a form that makes the information available to the public.

Sponsor: Representative Campbell

HB2143: HOMEOWNERS' ASSOCIATIONS; SOLAR SCREENS: Homeowners associations cannot prohibit the installation or use of solar screens intended to act as an energy saving device.

Sponsor: Representative Campbell

HB2287: HAM RADIOS: Counties, municipalities and homeowners associations must make accommodations for amateur radio station emergency service communications, antennae and structures.

Sponsor: Representative McClain

HB2330: REVISIONS TO HOMEOWNERS ASSOCIATION OPEN MEETING LAWS: Places additional restrictions on the open meeting laws for Condominiums and Planned Communities, including: (1) owners in attendance must receive the agenda for the meeting, (2) Board must announce the reason for a closed meeting, (3) limits emergency board meetings, (4) limits action without meeting (allowed by unanimous written board approval), (5) permits recording of board meetings by owners, (6) limits e-mail communication among board members, and (7) limits use of conference calls by board members.

Sponsor: Representative Harper

H2602: FORECLOSED PROPERTIES IN HOMEOWNERS ASSOCIATIONS: Owner of a foreclosed property is liable to a Condominium or Planned Community association for costs associated with rubbish collection or weed removal.

Sponsor: Representative Catherine Miranda

H2685: REQUIRED WEBSITE: Boards of Directors in associations with 50 or more units or lots must post the most recent version of the governing documents, financial statements, and the agendas and minutes of any association and open board meetings on the internet.

Sponsor: Representative Goodale

SB1034: PRIVATE EASEMENTS; MAINTENANCE: A property owner who has an easement over another owner's property must jointly share the responsibility for maintaining the easement. Provides for a sharing of the costs of maintenance if the easement is owned by multiple parties, or if it is on parcels under different ownership.

Sponsor: Senator Barto

SB1170: ASSOCIATION CANNOT ENFORCE ITS RESTRICTIONS ON PUBLIC ROADWAYS : After the period of declarant control, an association has no authority over and cannot regulate any public roadway.

Sponsor: Senator Barto

SB1299: REVISION OF VIOLATION NOTICE REQUIREMENTS: A violation notice is no longer required to state the first and last name of the person or persons who observed the violation.

Sponsor: Senator Gray

SB1304: INCREASING ASSESSMENTS: Any proposed increase in annual assessment must be approved by at least 2/3rds of those voting.

Sponsor: Senator Landrum Taylor

SB1343: TRANSFER FEES: Associations cannot charge transfer fees that total more than \$500. Associations can charge 10 cents per printed page, up to \$250, for copies of disclosure documents.

Sponsor: Senator Antenori