

**STATUS OF LEGISLATION
PERTAINING TO HOMEOWNERS ASSOCIATIONS
2004**

This has been a record year at the legislature for bills pertaining to associations. Twelve bills have passed and have been signed by the governor.

SB 1125

The governor signed Senate Bill 1125, amending A.R.S. §§ 33-1256 and 33-1807, on April 7, 2004. It will become law on August 25, 2004.

Currently, associations must provide a statement showing the amount of unpaid assessments if requested in writing by an owner, a lienholder or a person designated by the owner. The new law expands this so that associations must respond to written requests from escrow agents as well.

Additionally, associations must now record a statement with the county recorder in the county in which the association is located. The statement must contain the following information:

1. The name of the association or the designated agent or management company;
2. The address of the association;
3. The telephone number of the association or its designated agent or management company;
4. The name of the community; and
5. The date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration.

If the association's address, designated agent or management company changes, the association must amend the notice within 90 days after the change.

SB 1137

The governor signed Senate Bill 1137, amending A.R.S. § 10-3304, on April 12, 2004. It will become law on August 25, 2004.

This bill makes it clear that any owner may file suit against an association that is a non-profit corporation on the basis that the association did not have the power to take certain action. In other non-profits, such a suit must be filed by at least ten percent of the members or fifty members, whichever is less.

SB 1311

The governor signed Senate Bill 1311, amending A.R.S. §§ 12-1362 and 12-1363, on May 10, 2004. It will become law on August 25, 2004. This bill pertains to construction defect actions.

Under current law, the association must send the builder a list of defects at the time the association files suit. The builder then has 60 days to inspect the property and make an offer. The association has 20 days to respond and the builder then has ten days to make one final offer. The builder's final offer is used as a benchmark and the party that beats that mark at trial is entitled to recover attorneys' fees and costs.

The new bill will move this process forward such that it will now occur before the suit is filed. Specifically, the association must provide the basis for the claim 90 days before filing suit.

Furthermore, if the builder provides a factual basis for the offer, then the association must provide a factual basis for the response. Finally, the insurance carrier of the builder must treat the initial letter from the association as a claim under the applicable policy.

HB 2177

The governor signed House Bill 2177, amending A.R.S. §§ 10-11602 and 33-1248, 33-1804 and adding §§ 33-1258 and 33-1805, on April 19, 2004. It will become law on August 25, 2004.

This bill requires that all records of the association be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative unless the records fall into one of the following categories: 1) Privileged communication between an attorney for the association and the association; 2) Pending or contemplated litigation; 3) Meeting minutes from a proper executive session; 4) Personal health and financial records of a member, an employee of the association or an employee of a contractor for the association; 5) Records relating to the job performance, compensation, health records or complaints against an employee of the association or an employee of a contractor of the association who works under the direction of the association; and 6) Any situations where the disclosure would violate any state or federal law.

Except for time share associations, all meetings must now be open to members or any person designated by a member in writing as the member's representative. Furthermore, the member or the representative shall be permitted to speak at an appropriate time. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or a representative to speak before the board takes formal action on an item under formal discussion in addition to any other opportunities to speak. Finally, the board shall provide for a reasonable number of persons to speak on each side of an issue.

The board may go into executive session only to discuss the following: 1) Legal advice from an attorney for the board or the association; 2) Pending or contemplated litigation; 3) Personal health and financial information about a member of the association, an individual employee of the association or an individual employee of a contractor for the association; and 4) Matters relating to the job performance, compensation, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

HB 2250

The governor signed House Bill 2250, amending A.R.S. §§ 33-801 and 33-803, 33-807, 33-808, 33-809, 33-810, 33-811, 33-812, 33-813, on May 4, 2004. It will become law on August 25, 2004. This bill makes minor changes to the process of applying for excess proceeds in the event of a Trustee's Sale.

The important point to remember is to monitor Trustee's Sales. First, the owner might declare bankruptcy in order to avoid the sale thus giving the association an opportunity to collect any unpaid assessments. Second, the association may be entitled to collect excess proceeds. Third, the association should be aware of the new owner as soon as possible since the new owner is bound by the documents, including the assessment obligation, immediately upon purchase.

HB 2368

This bill was signed by the governor on April 16, 2004 and will become law on August 25, 2004. It will amend A.R.S. § 33-1101.

This bill will increase the homestead exemption from \$100,000 to \$150,000. This will affect associations who try to collect on personal judgments. In such cases, an owner will now be able to shield \$150,000 worth of equity in a home from any creditor, including an association.

HB 2379

The governor signed House Bill 2379, adding A.R.S. § 33-1810, on April 8, 2004. This new law will become effective on December 31, 2004.

Unless the association documents require an audit, all associations must provide for one of the following:

1. An annual financial audit;
2. A review; or
3. A compilation.

This must be done no later than 180 days after the end of the fiscal year and must be made available upon request to the members within 30 days after completion.

HB 2380

House Bill 2380 was signed by the governor on May 18, 2004. It will become law on August 25, 2004. It will amend A.R.S. §§ 33-1260 and 33-1806.

Currently, both condominiums and planned communities with 50 units or more must provide a resale disclosure statement and package. This bill will require that the resale disclosure package now contain a statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that by accepting this contract, I may be giving up my rights to the homestead exemption protection regarding a lien of the association." The statement shall also include a signature line for the purchaser and shall be returned to the association within 14 calendar days.

HB 2381

The governor signed House Bill 2381 on June 2, 2004. This bill will become law on August 25, 2004. This new law applies to both condominiums and planned communities and amends A.R.S. §§ 33-1202, 33-1215, 33-1243, 33-1245 and adding § 33-1811.

Under this new law, a board member shall declare a conflict of interest if any contract, decision or other action for compensation taken by or on behalf of the board would benefit any member of the board or any person who is a parent, grandparent, spouse, child or sibling of a member of the board or a parent or spouse of any of those persons. The declaration of a conflict must take place in an open meeting before the board discusses or takes action on that issue. However, the member may then vote on that issue. Finally, any contract entered into in violation of this law is void and unenforceable.

HB 2402

This bill was signed by the governor on June 7, 2004. It amends A.R.S. §§ 33-1256 and 33-1807. It will become law August 25, 2004.

This bill affects the collection of fines. In condominiums it also affects the collection of fees for use of the common areas, fees for the recordation of amendments and fees for providing a statement of assessments. This bill does not affect to the collection of regular assessments.

When an association wants to collect a fine, one of the fees set forth above or late charges or interest connected to a fine or one of the fees set forth above, the Association must go to Court and get a Judgment. The Association may then collect on the Judgment in one of two ways. First, the Association may use garnishment or other collection procedures typically used to collect personal judgments. Second, the Association could record the Judgment and collect when the property is conveyed. The Association cannot foreclose based on fines.

This will present some record keeping issues for associations. Associations will no longer be able to collect fines upon transfer of a property unless the Association has obtained a Judgment and recorded it as set forth above. Thus, fines should not be included in the ledger and should be tracked separately unless the Association has obtained a Judgment.

In some cases where the Association documents specifically provide for fines and state that the Association has a lien for fines, you may be able to argue that the new statute is irrelevant. However, we would strongly recommend legal review of the specific situation before taking such action.

HB 2478

This bill was signed by the governor on June 1, 2004. It will amend A.R.S. § 33-1808 relating to planned communities. It will become law on August 25, 2004.

The main portion of the bill allows members to display a "political sign" 45 days before an election and 7 days after an election. The display may be indoors or outdoors. However, the display must be on the members' property and the association can still regulate or ban displays on the common areas.

A political sign is a sign that attempts to influence the election of a public officer or attempts to influence a public measure such as a ballot measure, a proposition or the recall of a public officer.

The association may regulate the size and number of political signs as long as the restriction is no more restrictive than the applicable town, city or county ordinance. If there is no applicable ordinance, the association must, at a minimum, allow one sign as long as the sign is not larger than 24 by 24 inches.

HB 2492

The governor signed House Bill 2492, amending A.R.S. § 33-1809 on April 26, 2004. This bill pertains only to planned communities and does not pertain to condominiums. It will become law on August 25, 2004.

Pursuant to ARS § 33-1809, an association cannot prohibit a resident from parking a motor vehicle on a street or driveway in a planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either one of the following applies:

Category 1

The resident is employed by a public service corporation that is regulated by the Corporation Commission and that is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas pipelines and related infrastructure; the vehicle has a gross vehicle weight rating of 20,000 pounds or less; and the vehicle is owned or operated by a public service corporation and bears an official emblem or other visible designation of that corporation.

Category 2

The resident is employed by a public safety agency, including police or fire service for a federal, state, local or tribal agency, or a private fire service provider or a registered ambulance service provider; the vehicle has a gross vehicle weight rating of 10,000 pounds or less; and the vehicle bears an official emblem or other visible designation of the agency.