State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2717

AN ACT
AMENDING SECTIONS 33-1242, 33-1261 AND 33-1808, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 33-1242, Arizona Revised Statutes, is amended to read:

33-1242. Powers of unit owners' association; penalties; notice to unit owner of violation

A. Subject to the provisions of the declaration, the association may:

1. Adopt and amend bylaws and rules.
2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
3. Hire and discharge managing agents and other employees, agents and independent contractors.
4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
5. Make contracts and incur liabilities.
6. Regulate the use, maintenance, repair, replacement and modification of common elements.
7. Cause additional improvements to be made as a part of the common elements.
8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
9. Grant easements, leases, licenses and concessions through or over the common elements.
10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, impose reasonable monetary penalties upon unit owners for violations of the declaration, bylaws and rules of the association.
12. Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments.
13. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
15. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
16. Exercise any other powers conferred by the declaration or bylaws.
17. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.

18. Exercise any other powers necessary and proper for the governance and operation of the association.

B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1256, subsection J.

C. Within ten business days after receipt of the certified mail containing the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the condominium documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the unit owner must follow to contest the notice.

D. Unless the information required in subsection C, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the condominium documents, including the collection of attorney fees, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

E. AN ASSOCIATION MAY NOT COLLECT ATTORNEY FEES RELATING TO ANY VIOLATION OF THE CONDOMINIUM DOCUMENTS IN AN AMOUNT THAT IS HIGHER THAN TWO TIMES THE AMOUNT OF THE PENALTY IMPOSED FOR THE VIOLATION.

Sec. 2. Section 33-1261, Arizona Revised Statutes, is amended to read:

33-1261. Flag display; for sale signs; political petitions; applicability

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by a unit owner on that unit owner's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles but shall not prohibit the installation of a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use or placement of the indoor or outdoor display of a for sale sign and a sign rider by a unit owner on that owner's property, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. With respect to real estate for sale or lease in the condominium, an association shall not prohibit in any way other than as specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.

3. An owner's or an owner's agent's for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If leasing of a unit is allowed, the association may prohibit open house leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit but may reasonably regulate the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property dedicated to the public within the association. A condominium is not required to comply with this subsection if the condominium restricts vehicular or pedestrian access to the condominium.
Nothing in this subsection requires a condominium to make its common elements available for the circulation of political petitions to anyone who is not an owner or resident of the community.

E. ANY ASSOCIATION OR MANAGING AGENT THAT VIOLATES SUBSECTION C OF THIS SECTION, FORFEITS AND EXTINGUISHES THE LIEN RIGHTS AUTHORIZED UNDER SECTION 33-1256 AGAINST THAT UNIT FOR A PERIOD OF SIX CONSECUTIVE MONTHS FROM THE DATE OF THE VIOLATION.

E. F. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

Sec. 3. Section 33-1808, Arizona Revised Statutes, is amended to read:

33-1808. Flag display; political signs; caution signs; for sale

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by an association member on that member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles but shall not prohibit the installation of a flagpole.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign with the maximum dimensions of twenty-four inches by twenty-four inches on a member's property. For the purposes of this subsection, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.
D. Notwithstanding any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:
   1. The signs are displayed in residential areas only.
   2. The signs are removed within one hour of children ceasing to play.
   3. The signs are displayed only when children are actually present within fifty feet of the sign.
   4. The temporary signs are no taller than three feet in height.
   5. The signs are professionally manufactured or produced.

E. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

F. Notwithstanding any provision in the community documents, an association shall not prohibit OR CHARGE A FEE FOR THE USE OR PLACEMENT OF the indoor or outdoor display of a for sale sign and a sign rider by an association member on that member's property, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. With respect to real estate for sale or lease in the planned community, an association shall not prohibit IN ANY WAY OTHER THAN AS SPECIFICALLY AUTHORIZED BY THIS SECTION or otherwise regulate any of the following:
   1. Temporary open house signs or a unit-owner's MEMBER'S for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
   2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.
   3. An owner's or an owner's agent's for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If leasing of a member's property is not prohibited or restricted, the association may prohibit open house leasing being held before 8:00 a.m. or after 6:00 p.m.
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G. Notwithstanding any provision in the community documents, an association shall not prohibit but may reasonably regulate the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property dedicated to the public within the association. A planned community is not required to comply with this subsection if the planned community restricts vehicular or pedestrian access to the planned community. Nothing in this subsection requires a planned community to make its common elements available for the circulation of political petitions to anyone who is not an owner or resident of the community.

H. ANY ASSOCIATION OR MANAGING AGENT THAT VIOLATES SUBSECTION C OF THIS SECTION, FORFEITS AND EXTINGUISHES THE LIEN RIGHTS AUTHORIZED UNDER SECTION 33-1807 AGAINST THAT MEMBER'S PROPERTY FOR A PERIOD OF SIX CONSECUTIVE MONTHS FROM THE DATE OF THE VIOLATION.