State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1148

AN ACT
AMENDING SECTIONS 41-2141, 41-2198.02 AND 41-2198.04, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY.

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

Section 1. Section 41-2141, Arizona Revised Statutes, is amended to read:

41-2141. Department of fire, building and life safety;
establishment; purposes; components

A. The department of fire, building and life safety is established to further the public interest of safety and welfare by maintaining and enforcing standards of quality and safety for manufactured homes, mobile homes and factory-built buildings and by reducing hazards to life and property through the maintenance and enforcement of the state fire code by providing fire training, fire investigations and public life safety education as provided for in this chapter.

B. The department of fire, building and life safety has as an additional purpose the protection of the public interest in maintaining the substantial responsibility for interpreting and enforcing the terms of mobile home park rental agreements through its hearing officer functions and has exercised that responsibility for mobile home communities for many years, including interpretation of statutes regulating those common interest communities and the interpretation and enforcement of the otherwise private contracts and rules that govern those communities, even though the communities themselves are not directly licensed by the department. Accordingly, the department of fire, building and life safety performs a similar function for condominiums regulated by title 33, chapter 9 and planned communities regulated by title 33, chapter 16 in that the department, through its hearing officer function, applies and enforces the statutes regulating those common interest communities and the interpretation and enforcement of the otherwise private contracts and rules that govern those communities. Similarly, the department does not directly license those communities. It is also the purpose of the department to establish a procedure to protect the consumer of such products and services, including the owners in condominiums and planned communities as well as the renters in mobile home park communities.

C. The department of fire, building and life safety consists of the board of manufactured housing, the installation standards committee, the state fire safety committee and the director of the department. The director's office consists of the deputy director, the office of manufactured housing, the office of state fire marshal and the office of administration.

D. The attorney general shall act for the department in all legal actions or proceedings and shall advise the department on all questions of law arising out of the administration of this chapter.

Sec. 2. Section 41-2198.02, Arizona Revised Statutes, is amended to read:

41-2198.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. For
purposes of actions brought under the Arizona mobile home parks residential landlord and tenant act, the civil penalty shall not exceed five hundred dollars. All monies collected pursuant to this article shall be deposited in the state general fund to be used to offset the cost of administering the administrative law judge function, except that monies collected from disputes involving condominiums or planned communities as prescribed in section 41-2198.01, subsection B shall be deposited in the condominium and planned community hearing office fund established by section 41-2198.05. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 41-2198.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 41-2198.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. Notwithstanding sections 41-1092.08, subsection B and 41-1092.09, an order issued by the administrative law judge in an action regarding a condominium or planned community is the final administrative decision and is not subject to a request for rehearing. The order issued by the administrative law judge is enforceable through contempt of court proceedings AND IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED BY SECTION 41-1092.08.

Sec. 3. Section 41-2198.04, Arizona Revised Statutes, is amended to read:

41-2198.04. Rehearing; appeal

A. Except for an action relating to condominium documents or planned community documents or the statutes regulating condominiums or planned communities, a person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the director a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the director shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 41-2198.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the director shall include a statement of the particular grounds and reasons for the director's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.
2. Such representation is not the officer's or employee's primary duty
to the corporation but is secondary or incidental to such officer's or
employee's duties relating to the management or operation of the corporation.

Sec. 4. Legislative findings and intent; department of fire,
building and life safety; community disputes

It is the intent of the legislature to find, determine and clarify all
of the following after careful consideration of the case Gelb v. Department
of Fire, Building and Life Safety, 1 CA CV 09-0744, filed October 28, 2010
(Ct. App. 2010):

1. The department of fire, building and life safety has exercised
substantial responsibility for many years in the enforcement and application
of state laws and private contracts that regulate the relationships between
those who reside in and those who control certain types of common housing,
namely, mobile home park residential communities.

2. The legislature has determined that while the direct licensure of
mobile home parks and their owners may not have been necessary, the
regulation of their private, legal relationships with their tenants has been
and continues to be an important consumer protection function of the
department of fire, building and life safety and that department has
developed considerable expertise in interpreting, enforcing and applying the
statutes relating to these mobile home communities and in interpreting,
applying and enforcing the terms of the leases, rules and other documents
that regulate the relationship between the residents of the mobile home parks
and the owners and managers of those parks, and doing so in a cost-effective
manner for the residents.

3. The legislature further determines and finds that while direct
licensure and regulation of condominiums and planned communities may not be
necessary at this time, the legislature has repeatedly found over the years
that owners in condominiums and planned communities are frequently subjected
to inconsistent, unreasonable and often unlawful enforcement and application
of the declarations, rules and bylaws that govern their communities, their
managers and their boards of directors, and owners are often unable to afford
the cost of formally litigating their disputes in the superior court.

4. The legislature further finds that the continuing use of the
existing hearing officer function in the department of fire, building and
life safety will provide for an efficient use of already-established common
interest community expertise at this agency, will provide an important
consumer protection for owners in condominiums and planned communities and
will efficiently and effectively provide for resolution of these common
interest community disputes without the expense, formality and difficulty of
requiring a trial in the superior court in every instance, and will do so
without the cost and bureaucratic complexity of creating an entirely new
administrative body to perform these important functions, while still
maintaining the ability and right to recourse in the superior court, and
without threat to the core functions of the judiciary.