



ARIZONA STATE SENATE
Fifty-First Legislature, First Regular Session

FACT SHEET FOR H.B. 2371

technical correction; materials; resident preference
(now: homeowners' associations; omnibus)

Purpose

Specifies requirements for planning entities of municipalities and counties (local governments) related to planned communities. Outlines lawful actions a management company may take on behalf of a homeowners' association (HOA) if certain requirements are met. Enumerates rental rights of tenants and unit and property owners in condominium and planned community HOAs.

Background

An HOA is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. A planned community is a real estate development that: 1) includes real estate owned and operated by a nonprofit corporation or unincorporated association of owners; and 2) is created pursuant to a recorded declaration for the purpose of managing, maintaining or improving the property (A.R.S. § 33-1802). A condominium refers to a real estate development in which certain portions are designated for separate ownership (units) and the remainder is designated for common ownership by the unit owners. A condominium may be created by recording a declaration in the county in which the condominium is located (A.R.S. § 33-1202).

The principal distinction between condominium and planned community HOAs involves the ownership of the common areas or elements. In a condominium, each unit owner has an undivided percentage interest in the common elements, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas. In a planned community, the common areas, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common areas.

An HOA may place a lien on a home or unit for regular assessments charged to the owner for HOA expenses and for late fees for those assessments from the time the assessment becomes due, or for fees, charges, late charges, monetary penalties or interest after the entry of a judgment in a civil suit (A.R.S. §§ 33-1256, 33-1807).

There is no anticipated fiscal impact to the state General Fund associated with this measure.

Provisions

Planned Communities and Local Governments

1. Applies the following provisions to municipality planning agencies and county planning and zoning commissions (planning or zoning entity).
2. Prohibits the planning or zoning entity of a local government from requiring, as part of a subdivision regulation or zoning ordinance, a subdivider or developer to construct or enact a planned community.
3. Asserts that a subdivider or developer cannot be penalized for the lack of a planned community as part of the preliminary plat or specific plan.
4. Permits a local government to require a developer or subdivider to construct or enact a planned community to maintain private improvements approved and installed as part of a preliminary or final plat or specific plan; applies only to those planned communities established in plats recorded after the effective date of this act.
5. States these provisions do not limit the establishment or authority of any planned community established pursuant to statute.

Management Companies

6. Allows a management company (company), its officers and employees to act on behalf of a planned community or condominium HOA and its board of directors by taking the actions below, if the HOA is contracted with such a lawfully formed and operating entity for management services.
7. Permits a company to record a notice of lien or notice of claim of lien of the HOA against the property of a unit owner or HOA member (owner) in the condominium or planned community if all of the following apply:
 - a) the officer or employee is specifically authorized in writing by the HOA to do so and is a certified legal document preparer as prescribed in the Arizona Code of Judicial Administration;
 - b) doing so is not the primary duty of the officer or employee with respect to the HOA and is a secondary or incidental duty to the HOA;
 - c) the HOA is the original party to the lien and the lien right is not the result of an assignment of rights; and
 - d) the lien right exists by operation of law pursuant to statute and is not the result of obtaining a final judgment in an action to which the HOA is a party.
8. Allows a company and its officers and employees to appear in a small claims court action if all of the following apply:
 - a) the officer or employee is specifically authorized in writing by the HOA to do so;
 - b) doing so is not the primary duty of the officer or employee with respect to the HOA and is a secondary or incidental duty to the HOA; and
 - c) the HOA is an original party to the small claims court action.

Rental in an HOA

9. Permits an owner to use the unit or property as a rental property unless doing so is prohibited in the declaration, but the owner must comply with the declaration's rental time period restrictions.
10. Allows an owner to make a written designation of a third party to act as the owner's agent with respect to all HOA matters relating to the unit or property.
11. Requires the owner to provide the HOA a copy of the written designation of the agent. The designation must be signed by the owner of record.
12. Authorizes the HOA, on delivery of the written designation, to conduct all HOA business related to the unit or property through the designated agent.
13. Specifies that notice to the agent on any matter relating to the unit or property constitutes notice to the owner.
14. Prohibits an HOA, on rental of a unit or property, from requiring an owner or agent to disclose any tenant information other than:
 - a) the name and contact information for any adults occupying the unit or property;
 - b) the time period of the lease, including the beginning and ending dates;
 - c) a description and the license plate number of the tenants' vehicles; and
 - d) if the condominium or planned community is age restricted, a government issued photo identification that confirms the tenant meets the age restrictions or requirements.
15. Allows an HOA, on request of the HOA or its managing agent for the above disclosures, to charge a fee of \$25 or less.
16. Authorizes the fee to be charged for each new tenancy for that unit or property, but prohibits the fee for a renewal of a lease.
17. Prohibits an HOA or its managing agent from assessing, levying or charging any other fee or fine or otherwise imposing a requirement on a rental unit or property any differently than on an owner-occupied unit or property in the HOA.
18. Prohibits the HOA from requiring:
 - a) the owner to provide a copy of the tenant's rental application, credit report, lease agreement, rental contract or other personal information regarding the tenant except as allowed above; or
 - b) the tenant to sign a waiver or other document limiting the tenant's civil rights of due process as a condition of the tenant's occupancy of the unit or property.
19. Specifies the above provision does not prohibit the HOA from acquiring a credit report on a person in an attempt to collect a debt.

Miscellaneous

20. Specifies another form of HOA voting may include the use of electronic mail and facsimile delivery.
21. Requires the filing fee related to disputes between an owner and a condominium or planned community HOA to be refunded to the petitioner on dismissal of a petition as follows:
 - a) at the request of the petitioner before a hearing is scheduled; or
 - b) by stipulation of the parties before a hearing is scheduled.
22. Makes technical and conforming changes.
23. Becomes effective on the general effective date.

House Action

GOV	2/19/13	DPA/SE	8-1-0-0
3 rd Read	3/7/13		47-12-1-0

Prepared by Senate Research

March 19, 2013

AW/ly