

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1094

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 33-1801, Arizona Revised Statutes, is amended to
3 read:

4 33-1801. Applicability; exemptions; voluntary election to be
5 subjected to chapter

6 A. This chapter applies to all planned communities.

7 B. Notwithstanding any provisions in the community documents, this
8 chapter does not apply to any school that receives monies from this state,
9 including a charter school, and a school is exempt from regulation or any
10 enforcement action by any homeowners' association that is subject to this
11 chapter. With the exception of homeschools as defined in section 15-802,
12 schools shall not be established within the living units of a homeowners'
13 association. The homeowners' association may enter into a contractual
14 agreement with a school district or charter school to allow use of the
15 homeowners' association's common areas by the school district or charter
16 school.

17 C. This chapter does not apply to EITHER OF THE FOLLOWING:

18 1. Timeshare plans or associations that are subject to chapter 20 of
19 this title.

20 2. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, A
21 NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS THAT IS
22 CREATED OR INCORPORATED BEFORE JANUARY 1, 1974 AND THAT DOES NOT HAVE
23 AUTHORITY TO ENFORCE COVENANTS, CONDITIONS AND RESTRICTIONS RELATED TO THE

1 USE, OCCUPANCY OR APPEARANCE OF THE SEPARATELY OWNED LOTS, PARCELS OR UNITS
2 IN A REAL ESTATE DEVELOPMENT, UNLESS A MAJORITY OF ALL THE MEMBERS OF SUCH
3 A NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS ELECT IN
4 WRITING TO SUBJECT THE CORPORATION OR ASSOCIATION TO THIS CHAPTER BY
5 RECORDING A NOTICE OF ELECTION PURSUANT TO SUBSECTION D OF THIS SECTION.

6 D. A NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS
7 THAT HAS THE POWER UNDER RECORDED COVENANTS TO ASSESS MEMBERS TO PAY THE
8 COSTS AND EXPENSES INCURRED IN THE PERFORMANCE OF OBLIGATIONS CREATED BY
9 RECORDED COVENANTS FOR A REAL ESTATE DEVELOPMENT THAT DOES NOT QUALIFY AS A
10 PLANNED COMMUNITY MAY ELECT TO SUBJECT THE NONPROFIT CORPORATION OR
11 UNINCORPORATED ASSOCIATION OF OWNERS TO THIS CHAPTER WITH THE WRITTEN
12 APPROVAL OF A MAJORITY OF ALL THE MEMBERS. A NOTICE OF ELECTION TO BE
13 SUBJECT TO THIS CHAPTER SHALL BE RECORDED BY THE NONPROFIT CORPORATION OR
14 UNINCORPORATED ASSOCIATION OF OWNERS WITH THE COUNTY RECORDER OF THE COUNTY
15 OR COUNTIES IN WHICH THE REAL ESTATE DEVELOPMENT IS LOCATED. THE NOTICE IS
16 EFFECTIVE AS OF THE DATE OF THE RECORDING OF THE NOTICE. ANY SUCH ELECTION
17 MAY BE RESCINDED IN THE SAME MANNER AS AN ELECTION AND IS EFFECTIVE AS OF
18 THE DATE OF THE RECORDING OF THE NOTICE OF RESCISSION.

19 Sec. 2. Section 33-1802, Arizona Revised Statutes, is amended to
20 read:

21 33-1802. Definitions

22 In this chapter and in the community documents, unless the context
23 otherwise requires:

24 1. "Association" means a nonprofit corporation or unincorporated
25 association of owners that is created pursuant to a declaration to own and
26 operate portions of a planned community and that has the power under the
27 declaration to assess association members to pay the costs and expenses
28 incurred in the performance of the association's obligations under the
29 declaration. ASSOCIATION DOES NOT INCLUDE A NONPROFIT CORPORATION OR
30 UNINCORPORATED ASSOCIATION OF OWNERS THAT IS CREATED OR INCORPORATED BEFORE
31 JANUARY 1, 1974 AND THAT DOES NOT HAVE AUTHORITY TO ENFORCE COVENANTS,
32 CONDITIONS OR RESTRICTIONS RELATED TO THE USE, OCCUPANCY OR APPEARANCE OF

1 THE SEPARATELY OWNED LOTS, PARCELS OR UNITS IN A REAL ESTATE DEVELOPMENT,
2 UNLESS THE NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS
3 ELECTS TO BE SUBJECT TO THIS CHAPTER PURSUANT TO SECTION 33-1801,
4 SUBSECTION D.

5 2. "Community documents" means the declaration, bylaws, articles of
6 incorporation, if any, and rules, if any.

7 3. "Declaration" means any instruments, however denominated, that
8 establish a planned community and any amendment to those instruments.

9 4. "Planned community" means a real estate development that includes
10 real estate owned and operated by or real estate on which an easement to
11 maintain roadways or a covenant to maintain roadways is held by a nonprofit
12 corporation or unincorporated association of owners, that is created for
13 the purpose of managing, maintaining or improving the property and in which
14 THE DECLARATION EXPRESSLY STATES BOTH THAT the owners of separately owned
15 lots, parcels or units are mandatory members and THAT THE OWNERS are
16 required to pay assessments to the association for these purposes. Planned
17 community does not include ANY OF THE FOLLOWING:

18 (a) A timeshare plan or a timeshare association that is governed by
19 chapter 20 of this title. ~~or~~

20 (b) A condominium that is governed by chapter 9 of this title.

21 (c) A REAL ESTATE DEVELOPMENT THAT IS NOT MANAGED OR MAINTAINED BY
22 AN ASSOCIATION.

23 Sec. 3. Legislative intent; association; planned community;
24 clarifying language

25 The legislature intends that the amendments made to section 33-1802,
26 Arizona Revised Statutes, are clarifying changes that are consistent with
27 the legislature's intent in 1994 in first enacting section 33-1802 and that
28 the remaining provisions of the act are intended to further these
29 clarifying changes.

30 Sec. 4. Retroactivity

31 Section 33-1802, Arizona Revised Statutes, as amended by this act,
32 applies retroactively to from and after July 16, 1994.

1 Sec. 5. Severability

2 If a provision of this act or its application to any person or
3 circumstance is held invalid, the invalidity does not affect other
4 provisions or applications of the act that can be given effect without the
5 invalid provision or application and to this end the provision of this act
6 are severable."

7 Amend title to conform

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03/25/2019
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C: LAT