

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

# SENATE BILL 1094

AN ACT

AMENDING SECTIONS 33-1801 AND 33-1802, ARIZONA REVISED STATUTES; RELATING  
TO PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

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  
19 of 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**  
24 **USE, OCCUPANCY OR APPEARANCE OF THE SEPARATELY OWNED LOTS, PARCELS OR**  
25 **UNITS IN A REAL ESTATE DEVELOPMENT, UNLESS A MAJORITY OF ALL THE MEMBERS**  
26 **OF SUCH A NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS**  
27 **ELECT IN WRITING TO SUBJECT THE CORPORATION OR ASSOCIATION TO THIS CHAPTER**  
28 **BY RECORDING A NOTICE OF ELECTION PURSUANT TO SUBSECTION D OF THIS**  
29 **SECTION.**

30 D. **A NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS**  
31 **THAT HAS THE POWER UNDER RECORDED COVENANTS TO ASSESS MEMBERS TO PAY THE**  
32 **COSTS AND EXPENSES INCURRED IN THE PERFORMANCE OF OBLIGATIONS CREATED BY**  
33 **RECORDED COVENANTS FOR A REAL ESTATE DEVELOPMENT THAT DOES NOT QUALIFY AS**  
34 **A PLANNED COMMUNITY MAY ELECT TO SUBJECT THE NONPROFIT CORPORATION OR**  
35 **UNINCORPORATED ASSOCIATION OF OWNERS TO THIS CHAPTER WITH THE WRITTEN**  
36 **APPROVAL OF A MAJORITY OF ALL THE MEMBERS. A NOTICE OF ELECTION TO BE**  
37 **SUBJECT TO THIS CHAPTER SHALL BE RECORDED BY THE NONPROFIT CORPORATION OR**  
38 **UNINCORPORATED ASSOCIATION OF OWNERS WITH THE COUNTY RECORDER OF THE**  
39 **COUNTY OR COUNTIES IN WHICH THE REAL ESTATE DEVELOPMENT IS LOCATED. THE**  
40 **NOTICE IS EFFECTIVE AS OF THE DATE OF THE RECORDING OF THE NOTICE. ANY**  
41 **SUCH ELECTION MAY BE RESCINDED IN THE SAME MANNER AS AN ELECTION AND IS**  
42 **EFFECTIVE AS OF THE DATE OF THE RECORDING OF THE NOTICE OF RESCISSION.**

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

3           33-1802. Definitions

4           In this chapter and in the community documents, unless the context  
5 otherwise requires:

6           1. "Association" means a nonprofit corporation or unincorporated  
7 association of owners that is created pursuant to a declaration to own and  
8 operate portions of a planned community and that has the power under the  
9 declaration to assess association members to pay the costs and expenses  
10 incurred in the performance of the association's obligations under the  
11 declaration. ASSOCIATION DOES NOT INCLUDE A NONPROFIT CORPORATION OR  
12 UNINCORPORATED ASSOCIATION OF OWNERS THAT IS CREATED OR INCORPORATED  
13 BEFORE JANUARY 1, 1974 AND THAT DOES NOT HAVE AUTHORITY TO ENFORCE  
14 COVENANTS, CONDITIONS OR RESTRICTIONS RELATED TO THE USE, OCCUPANCY OR  
15 APPEARANCE OF THE SEPARATELY OWNED LOTS, PARCELS OR UNITS IN A REAL ESTATE  
16 DEVELOPMENT, UNLESS THE NONPROFIT CORPORATION OR UNINCORPORATED  
17 ASSOCIATION OF OWNERS ELECTS TO BE SUBJECT TO THIS CHAPTER PURSUANT TO  
18 SECTION 33-1801, SUBSECTION D.

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

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

23           4. "Planned community" means a real estate development that  
24 includes real estate owned and operated by or real estate on which an  
25 easement to maintain roadways or a covenant to maintain roadways is held  
26 by a nonprofit corporation or unincorporated association of owners, that  
27 is created for the purpose of managing, maintaining or improving the  
28 property and in which THE DECLARATION EXPRESSLY STATES BOTH THAT the  
29 owners of separately owned lots, parcels or units are mandatory members  
30 and THAT THE OWNERS are required to pay assessments to the association for  
31 these purposes. Planned community does not include ANY OF THE FOLLOWING:

32           (a) A timeshare plan or a timeshare association that is governed by  
33 chapter 20 of this title. ~~OR~~

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

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

37           Sec. 3. Legislative intent; association; planned community;  
38 clarifying language

39           The legislature intends that the amendments made to section 33-1802,  
40 Arizona Revised Statutes, are clarifying changes that are consistent with  
41 the legislature's intent in 1994 in first enacting section 33-1802,  
42 Arizona Revised Statutes, and that the remaining provisions of the act are  
43 intended to further these clarifying changes.

1           Sec. 4. Retroactivity

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

4           Sec. 5. Severability

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