



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1432

unlawful restrictive covenants; uniform act..

Purpose

Establishes the Uniform Unlawful Restrictions in Land Records Act which allows a property owner whose property is subject to an unlawful restriction to submit to the county recorder an amendment to remove the unlawful restriction (amendment). Allows a homeowners' association (HOA) or condominium unit owners' association (COA) governing body to amend the body's governing instrument without a vote to remove an unlawful restriction and prescribes requirements and limitations of an amendment.

Background

The Uniform Law Commission (ULC) approved a uniform state law to allow a property owner whose deed contains an unlawful and unenforceable restriction to record an amendment to the land records that effectively removes the restriction. An *unlawful and unenforceable restriction* is a restriction inserted into a deed that was intended to prevent the affected property from being sold to or occupied by persons covered by that restriction. Throughout the first half of the 20th century, owners and developers of real property commonly inserted restrictive covenants into deeds and declarations ([ULC](#)).

An HOA's declaration may be amended by the HOA, if any, or, if there is no HOA or board, the owners of the property subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if outlined conditions are met. Within 30 days after adopting an amendment, the amendment must be recorded. Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located ([A.R.S. § 33-1817](#)).

A COA's declaration may be amended only by a vote of the unit owners to which at least 67 percent of the votes in the COA are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use. Within 30 days after the adoption of any amendment, the amendment must be recorded. An amendment to the declaration must be recorded in each county in which any portion of the COA is located and is effective only on recordation ([A.R.S. § 33-1227](#)).

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

Provisions

1. Allows an owner of real property subject to an unlawful restriction to submit to the county recorder for recordation in the land records of the county in which the property is located an amendment, only as to the owner's property.
2. Requires an amendment by a property owner to identify the owner, the real property affected and the document containing the unlawful restriction.
3. Requires the county recorder to record an amendment, add the amendment to the index and cross reference the amendment to the document containing the unlawful restriction.
4. Specifies that the county recorder and the county are not liable for recording an amendment.
5. Allows an HOA or COA governing body to amend the governing instrument to remove an unlawful restriction without a vote of the members.
6. Allows an HOA or COA member to request in a record that sufficiently identifies an unlawful restriction in the governing instrument that the governing body exercise the authority to amend.
7. Requires an HOA or COA governing body, within 90 days after receiving a request to amend, to determine, reasonably and in good faith, whether the governing instrument includes the unlawful restriction.
8. Requires the HOA or COA governing body to amend the governing instrument to remove an unlawful restriction, if the governing body determines that the governing instrument includes the unlawful restriction.
9. Requires an amendment by an HOA or COA to identify only the document containing the unlawful restriction.
10. Deems effective any amendment to remove an unlawful restriction from an HOA or COA governing instrument without a vote of the members, notwithstanding any provision of the governing instrument or any other law that requires a vote of the members to amend the governing instrument.
11. Requires any amendment to:
 - a) include a conspicuous prescribed statement;
 - b) be executed and acknowledged in the manner required for recordation of a document in the land records; and
 - c) be recorded in the land records of each county in which the document containing the unlawful restriction is recorded.
12. Specifies that the amendment does not affect the validity or enforceability of any restriction that is not an unlawful restriction.

13. Specifies that the amendment or a future conveyance of the affected real property is not a republication of a restriction that otherwise would expire by passage of time under any other law.
14. Prescribes an optional form that may be submitted by a property owner to the county recorder to remove an unlawful restriction.
15. Requires a court, in applying and construing the Uniform Unlawful Restrictions in Land Records Act, to consider the promotion of uniformity of the law among jurisdictions that enact it.
16. Specifies that the Uniform Unlawful Restrictions in Land Records Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit or supersede federal law relating to consumer disclosures or authorize electronic delivery of specified federal notices.
17. Defines *unlawful restriction* as a prohibition, restriction, covenant or condition in a document that interferes with or restricts the transfer, use or occupancy of real property on the basis of race, color, religion, national origin, sex, familial status, or disability in violation of state or federal law.
18. Defines terms.
19. Contains a severability clause.
20. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Prescribes information that must be included in an amendment by an HOA or COA or an amendment by a property owner.
2. Modifies the definitions of *unlawful restriction* and *governing instrument*.
3. Makes technical and conforming changes.

Senate Action

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Prepared by Senate Research

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