

REFERENCE TITLE: unlawful restrictive covenants; uniform act..

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1432

Introduced by
Senators Mesnard: Epstein

AN ACT

AMENDING TITLE 33, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE
7; RELATING TO CONVEYANCES AND DEEDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 33, chapter 4, Arizona Revised Statutes, is
3 amended by adding article 7, to read:

4 ARTICLE 7. UNIFORM UNLAWFUL RESTRICTIONS IN LAND RECORDS ACT

5 33-531. Short title

6 THIS ARTICLE MAY BE CITED AS THE UNIFORM UNLAWFUL RESTRICTIONS IN
7 LAND RECORDS ACT.

8 33-532. Definitions

9 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

10 1. "AMENDMENT" MEANS A DOCUMENT THAT REMOVES AN UNLAWFUL
11 RESTRICTION.

12 2. "DOCUMENT" MEANS A RECORD RECORDED OR ELIGIBLE TO BE RECORDED IN
13 LAND RECORDS.

14 3. "GOVERNING INSTRUMENT" MEANS A DOCUMENT RECORDED IN LAND RECORDS
15 THAT DOES ALL OF THE FOLLOWING:

16 (a) ESTABLISHES A GOVERNING BODY RESPONSIBLE FOR MANAGING COMMON
17 AREAS OR FACILITIES USED BY MORE THAN ONE OWNER OF A PROPERTY INTEREST
18 AFFECTED BY THE DOCUMENT.

19 (b) REQUIRES CONTRIBUTION, ENFORCEABLE BY A LIEN ON A SEPARATE
20 PROPERTY INTEREST, OF A SHARE OF TAXES, INSURANCE PREMIUMS, MAINTENANCE,
21 IMPROVEMENT OF OR SERVICES OR OTHER EXPENSES FOR THE COMMON BENEFIT OF THE
22 REAL PROPERTY DESCRIBED IN THE DOCUMENT.

23 4. "INDEX" MEANS A SYSTEM THAT ENABLES A SEARCH FOR A DOCUMENT IN
24 LAND RECORDS.

25 5. "LAND RECORDS" MEANS DOCUMENTS AND INDEXES MAINTAINED BY A
26 RECORDER.

27 6. "OWNER" MEANS A PERSON THAT HAS A FEE INTEREST IN REAL PROPERTY.

28 7. "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT
29 ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, INSTRUMENTALITY OR
30 OTHER LEGAL ENTITY.

31 8. "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS EITHER OF
32 THE FOLLOWING:

33 (a) INSCRIBED ON A TANGIBLE MEDIUM.

34 (b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN
35 PERCEIVABLE FORM.

36 9. "RECORDER" MEANS THE COUNTY RECORDER.

37 10. "REMOVE" MEANS ELIMINATE ANY APPARENT OR PURPORTEDLY CONTINUING
38 EFFECT ON TITLE TO REAL PROPERTY.

39 11. "UNLAWFUL RESTRICTION" MEANS A PROHIBITION, RESTRICTION,
40 COVENANT OR CONDITION IN A DOCUMENT THAT PURPORTS TO INTERFERE WITH OR
41 RESTRICT THE TRANSFER, USE OR OCCUPANCY OF REAL PROPERTY AND THAT IS BOTH
42 OF THE FOLLOWING:

43 (a) ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX,
44 FAMILIAL STATUS, DISABILITY OR OTHER PERSONAL CHARACTERISTICS.

45 (b) IN VIOLATION OF OTHER STATE OR FEDERAL LAWS.

33-533. Amendment by owner

EXCEPT WITH RESPECT TO PROPERTY TO WHICH SECTION 33-534 APPLIES, AN OWNER OF REAL PROPERTY SUBJECT TO AN UNLAWFUL RESTRICTION MAY SUBMIT TO THE RECORDER FOR RECORDATION IN THE LAND RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED AN AMENDMENT TO REMOVE THE UNLAWFUL RESTRICTION, BUT ONLY AS TO THE OWNER'S PROPERTY.

33-534. Amendment by association of owners

A. THE GOVERNING BODY OF AN ASSOCIATION OF OWNERS IDENTIFIED IN A GOVERNING INSTRUMENT, INCLUDING THE BOARD OF DIRECTORS OF A CONDOMINIUM AS PRESCRIBED IN CHAPTER 9 OF THIS TITLE OR A PLANNED COMMUNITY AS PRESCRIBED IN CHAPTER 16 OF THIS TITLE, WITHOUT A VOTE OF THE MEMBERS OF THE ASSOCIATION, MAY AMEND THE GOVERNING INSTRUMENT TO REMOVE AN UNLAWFUL RESTRICTION.

B. A MEMBER OF AN ASSOCIATION OF OWNERS MAY REQUEST IN A RECORD THAT SUFFICIENTLY IDENTIFIES AN UNLAWFUL RESTRICTION IN THE GOVERNING INSTRUMENT THAT THE GOVERNING BODY EXERCISE ITS AUTHORITY UNDER SUBSECTION A OF THIS SECTION. NOT LATER THAN NINETY DAYS AFTER THE GOVERNING BODY RECEIVES THE REQUEST, THE GOVERNING BODY SHALL DETERMINE, REASONABLY AND IN GOOD FAITH, WHETHER THE GOVERNING INSTRUMENT INCLUDES THE UNLAWFUL RESTRICTION. IF THE GOVERNING BODY DETERMINES THE GOVERNING INSTRUMENT INCLUDES THE UNLAWFUL RESTRICTION, THE GOVERNING BODY NOT LATER THAN NINETY DAYS AFTER THE DETERMINATION SHALL AMEND THE GOVERNING INSTRUMENT TO REMOVE THE UNLAWFUL RESTRICTION.

C. NOTWITHSTANDING ANY PROVISION OF THE GOVERNING INSTRUMENT OR ANY OTHER LAW, THE GOVERNING BODY MAY EXECUTE AN AMENDMENT UNDER THIS SECTION.

D. AN AMENDMENT UNDER THIS SECTION IS EFFECTIVE, NOTWITHSTANDING ANY PROVISION OF THE GOVERNING INSTRUMENT OR ANY OTHER LAW THAT REQUIRES A VOTE OF THE MEMBERS OF THE ASSOCIATION OF OWNERS TO AMEND THE GOVERNING INSTRUMENT.

33-535. Requirements and limitations of amendment

A. AN AMENDMENT UNDER THIS ARTICLE MUST IDENTIFY THE OWNER, THE REAL PROPERTY AFFECTED AND THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION. THE AMENDMENT MUST INCLUDE A CONSPICUOUS STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

THIS AMENDMENT REMOVES FROM THIS DEED OR OTHER DOCUMENT AFFECTING TITLE TO REAL PROPERTY AN UNLAWFUL RESTRICTION AS DEFINED IN SECTION 33-532, ARIZONA REVISED STATUTES. THIS AMENDMENT DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF A RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION.

B. THE AMENDMENT MUST BE EXECUTED AND ACKNOWLEDGED IN THE MANNER REQUIRED FOR RECORDATION OF A DOCUMENT IN THE LAND RECORDS. THE AMENDMENT MUST BE RECORDED IN THE LAND RECORDS OF EACH COUNTY IN WHICH THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION IS RECORDED.

C. THE AMENDMENT DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY RESTRICTION THAT IS NOT AN UNLAWFUL RESTRICTION.

1 D. THE AMENDMENT OR A FUTURE CONVEYANCE OF THE AFFECTED REAL
2 PROPERTY IS NOT A REPUBLICATION OF A RESTRICTION THAT OTHERWISE WOULD
3 EXPIRE BY PASSAGE OF TIME UNDER ANY OTHER LAW.

4 33-536. Optional form for amendment by owner

5 THE FOLLOWING FORM MAY BE USED BY AN OWNER TO MAKE AN AMENDMENT
6 UNDER SECTION 33-533:

7 AMENDMENT BY OWNER TO REMOVE AN UNLAWFUL RESTRICTION
8 THIS AMENDMENT IS RECORDED UNDER TITLE 33, CHAPTER 4, ARTICLE
9 7, ARIZONA REVISED STATUTES, BY AN OWNER OF AN INTEREST IN
10 REAL PROPERTY SUBJECT TO AN UNLAWFUL RESTRICTION AS DEFINED IN
11 SECTION 33-532, ARIZONA REVISED STATUTES.

12 1. NAME OF OWNER: _____

13 2. OWNER'S PROPERTY THAT IS SUBJECT TO THE UNLAWFUL
14 RESTRICTION IS DESCRIBED AS FOLLOWS:

15 ADDRESS: _____

16 LEGAL DESCRIPTION: _____

17 3. THIS AMENDMENT AMENDS THE FOLLOWING DOCUMENT:

18 TITLE OF DOCUMENT BEING AMENDED: _____

19 RECORDING DATE OF DOCUMENT BEING AMENDED: _____

20 RECORDING INFORMATION (BOOK/PAGE OR INSTRUMENT NUMBER):
21 _____

22 THIS AMENDMENT REMOVES FROM THE DOCUMENT DESCRIBED IN
23 PARAGRAPH 3 ALL UNLAWFUL RESTRICTIONS AS DEFINED IN SECTION
24 33-532, ARIZONA REVISED STATUTES. REMOVAL OF AN UNLAWFUL
25 RESTRICTION THROUGH THIS AMENDMENT DOES NOT AFFECT THE
26 VALIDITY AND ENFORCEABILITY OF ANY OTHER RESTRICTION THAT IS
27 NOT AN UNLAWFUL RESTRICTION AS DEFINED UNDER SECTION 33-532,
28 ARIZONA REVISED STATUTES, AT THE TIME OF FILING THIS
29 AMENDMENT. THIS AMENDMENT IS NOT EFFECTIVE IF THE PROPERTY IS
30 SUBJECT TO A GOVERNING INSTRUMENT AS DEFINED IN SECTION
31 33-532, ARIZONA REVISED STATUTES.

32 _____
33 OWNER'S SIGNATURE

DATE

34 NOTARY ACKNOWLEDGMENT

35 33-537. Duty and liability of recorder

36 A. THE RECORDER SHALL RECORD AN AMENDMENT SUBMITTED UNDER THIS
37 ARTICLE, ADD THE AMENDMENT TO THE INDEX AND CROSS REFERENCE THE AMENDMENT
38 TO THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION.

39 B. THE RECORDER AND THE COUNTY ARE NOT LIABLE FOR RECORDING AN
40 AMENDMENT UNDER THIS ARTICLE.

41 33-538. Uniformity of application and construction

42 IN APPLYING AND CONSTRUING THIS ARTICLE, A COURT SHALL CONSIDER THE
43 PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

1 33-539. Relation to electronic signatures in global and
2 national commerce act

3 THIS ARTICLE MODIFIES, LIMITS OR SUPERSEDES THE ELECTRONIC
4 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15 UNITED STATES CODE 7001
5 THROUGH 7031 BUT DOES NOT MODIFY, LIMIT OR SUPERSEDE 15 UNITED STATES CODE
6 SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
7 DESCRIBED IN 15 UNITED STATES CODE SECTION 7003(b).

8 Sec. 2. Severability

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