

Senate Engrossed

unlawful restrictive covenants; uniform act..

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

SENATE BILL 1432

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 DECLARATION OF A CONDOMINIUM AS
15 PRESCRIBED IN CHAPTER 9 OF THIS TITLE OR OF A PLANNED COMMUNITY AS
16 PRESCRIBED IN CHAPTER 16 OF THIS TITLE OR ANY DOCUMENT RECORDED IN LAND
17 RECORDS THAT DOES ANY OF THE FOLLOWING:

18 (a) ESTABLISHES A GOVERNING BODY OF AN ASSOCIATION OF OWNERS THAT
19 IS IDENTIFIED IN A DOCUMENT AND THAT IS RESPONSIBLE FOR MANAGING COMMON
20 AREAS OR FACILITIES USED BY MORE THAN ONE OWNER OF A PROPERTY INTEREST
21 AFFECTED BY THE DOCUMENT.

22 (b) REQUIRES CONTRIBUTION OF ASSESSMENTS OR DUES FROM OWNERS OF
23 PROPERTY THAT IS ENFORCEABLE BY A LIEN ON A SEPARATE PROPERTY INTEREST FOR
24 EXPENSES INCURRED BY A GOVERNING BODY OF AN ASSOCIATION OF OWNERS IN THE
25 PERFORMANCE OF OBLIGATIONS ESTABLISHED FOR THE COMMON BENEFIT OF THE
26 OWNERS OF THE REAL PROPERTY DESCRIBED IN THE DOCUMENT.

27 (c) ESTABLISHES PROHIBITIONS, RESTRICTIONS, COVENANTS OR CONDITIONS
28 ON THE TRANSFER, USE OR OCCUPANCY OF THE REAL PROPERTY DESCRIBED IN THE
29 DOCUMENT THAT ARE TO BE ENFORCED BY A GOVERNING BODY OF AN ASSOCIATION OF
30 OWNERS IDENTIFIED IN A DOCUMENT.

31 4. "INDEX" MEANS A SYSTEM THAT ENABLES A SEARCH FOR A DOCUMENT IN
32 LAND RECORDS.

33 5. "LAND RECORDS" MEANS DOCUMENTS AND INDEXES MAINTAINED BY A
34 RECORDER.

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

36 7. "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT
37 ENTITY, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, INSTRUMENTALITY OR
38 OTHER LEGAL ENTITY.

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

41 (a) INSCRIBED ON A TANGIBLE MEDIUM.

42 (b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN
43 PERCEIVABLE FORM.

44 9. "RECORDER" MEANS THE COUNTY RECORDER.

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

3 11. "UNLAWFUL RESTRICTION" MEANS A PROHIBITION, RESTRICTION,
4 COVENANT OR CONDITION IN A DOCUMENT THAT INTERFERES WITH OR RESTRICTS THE
5 TRANSFER, USE OR OCCUPANCY OF REAL PROPERTY ON THE BASIS OF RACE, COLOR,
6 RELIGION, NATIONAL ORIGIN, SEX, FAMILIAL STATUS OR DISABILITY IN VIOLATION
7 OF STATE OR FEDERAL LAW.

8 33-533. Amendment by owner

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

14 33-534. Amendment by association of owners

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

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

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

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

37 33-535. Requirements and limitations of amendment

38 A. AN AMENDMENT BY AN OWNER UNDER SECTION 33-533 MUST IDENTIFY THE
39 OWNER, THE REAL PROPERTY AFFECTED AND THE DOCUMENT CONTAINING THE UNLAWFUL
40 RESTRICTION. AN AMENDMENT BY AN ASSOCIATION OF OWNERS UNDER SECTION
41 33-534 MUST IDENTIFY ONLY THE DOCUMENT CONTAINING THE UNLAWFUL
42 RESTRICTION. THE AMENDMENT MUST INCLUDE A CONSPICUOUS STATEMENT IN
43 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.

D. 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.

33-536. Optional form for amendment by owner

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

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

1. NAME OF OWNER: _____

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

ADDRESS: _____

LEGAL DESCRIPTION: _____

3. THIS AMENDMENT AMENDS THE FOLLOWING DOCUMENT:

TITLE OF DOCUMENT BEING AMENDED: _____

RECORDING DATE OF DOCUMENT BEING AMENDED: _____

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

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

OWNER'S SIGNATURE

DATE

NOTARY ACKNOWLEDGMENT

1 33-537. Duty and liability of recorder

2 A. THE RECORDER SHALL RECORD AN AMENDMENT SUBMITTED UNDER THIS
3 ARTICLE, ADD THE AMENDMENT TO THE INDEX AND CROSS REFERENCE THE AMENDMENT
4 TO THE DOCUMENT CONTAINING THE UNLAWFUL RESTRICTION.

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

7 33-538. Uniformity of application and construction

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

10 33-539. Relation to electronic signatures in global and
11 national commerce act

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

17 Sec. 2. Severability

18 If a provision of this act or its application to any person or
19 circumstance is held invalid, the invalidity does not affect other
20 provisions or applications of the act that can be given effect without the
21 invalid provision or application, and to this end the provisions of this
22 act are severable.