

2007 ARIZONA LEGISLATIVE UPDATE
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Southern Arizona Chapter of the Community Associations Institute]

As of this writing, the 48th Arizona Legislature still is in session. Three bills that affect homeowners associations have been signed into law by the Governor and, another is expected to become law before the session ends. These laws will become effective sometime in September 2007. One bill that passed the House and Senate has been vetoed by the Governor. There are two significant bills still pending.

New Laws. HB2254 amends the Planned Communities Act by extending special parking rights to telecommunications vehicles that are required for emergency deployment. "Telecommunications" is defined as "the transmission of information of the user's choosing between or among points specified by the user without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services." Thus, cable service trucks as well as cellular and other phone company trucks are exempt from HOA parking restrictions (such as prohibition of on-street parking) if they are used for emergency response by an employee who lives in the subdivision.

HB2504 amends ARS §33-1808 of the Planned Communities Act by allowing the use of signs cautioning that there are children at play. There are restrictions on the use of these signs:

- (1) They may be displayed in residential areas only.
- (2) They must be removed within one hour of children ceasing to play.
- (3) They may be used only when children actually are present within 50 feet of the sign.
- (4) The signs must be temporary and can be no taller than three feet in height.
- (5) The signs must be professionally manufactured or produced.

This law also states that a Planned Community Association may not prohibit children who reside in the community from engaging in recreational activities (which is not defined but presumably would include skateboarding and basketball) on residential roadways that are under the jurisdiction of the Association and on which the posted speed limit is 25 miles per hour or less.

SB1062 authorizes a condominium unit owner or a planned community lot owner to display an indoor or outdoor "FOR SALE" sign as well as a "sign rider" on his/her property. The "FOR SALE" sign cannot exceed 18 by 24 inches and

the “sign rider” cannot exceed 6 by 12 inches. This law does not apply to Planned Communities that are access restricted (gated) to the public.

SB1330 Has Been Vetoed. Governor Napolitano vetoed SB 1330. Kevin DeMenna of DeMenna and Associates is the lobbyist hired by the Arizona CAI Legislative Action Committee with funds from the Central and Southern Arizona Chapters of CAI. Kevin did a great job providing the Governor and her staff with information on this law to support a veto. SB 1330 would have made the homestead exemption applicable to property owners in Planned Communities and Condominiums. This exemption protects \$150,000 of equity in a principle residence from creditors’ claims. The longstanding legal principle in Arizona is that CC&Rs (where the Association’s lien arises) are consensual contracts and that consensual contracts (which include mortgages and other loan transactions) are exempt from the homestead exemption. If this law had been put into effect, an Association’s lien rights would have been essentially ineffective. The law also may have had a negative impact on an Association’s right to collect delinquent assessments at close of escrow on the sale of a lot.

Pending Bills. SB1254 has been passed by the Senate and is expected to be passed by the House and signed into law. This law will deny a Planned Community Association the authority to revoke or modify a commercial sign (including a registered trademark) that has previously been approved by the Association and is located on properties zoned for commercial use. This law also states that no Planned Community Association can prohibit the installation or use of a solar energy device. However, the Association may adopt reasonable rules regarding the placement of a solar energy device so long as the adopted rules do not impair the functioning of the device, unreasonably restrict its use or affect the cost or efficiency of the device. And, this law also requires that a court awards reasonable attorney fees and costs to any party who substantially prevails against the Association for violating this statute. This law does little to change existing law in Arizona pertaining to solar energy devices in homeowners associations.

CAI’s Legislative Action Committee as well as industry professionals hope that SB1340 will not become law. It has been passed by the House and has been transmitted to the Senate. This bill requires the opening bid at a lien foreclosure sale to be for “fair market value.” Prior liens would be paid off and the remaining balance would go to the Lot Owner. The “fair market value” would be determined by an appraiser, but there is no detail about who obtains and pays for the appraisal. Furthermore, these requirements are not being made of any other forced sale process (like mortgage foreclosures or auto repossessions) and would assure that bidding at Sheriff’s Sale to finalize an association lien foreclosure would be non-existent. This is because bidders at such sales rarely

pay full market value, particularly for a property that they have not been able to inspect. For the past several years, bills have been introduced to disrupt Association lien rights and this is the 2007 version. By the time this newsletter has gone to press, the outcome of this bill will be known. In the meantime, CAI's "Calls to Action" will continue in the hopes that the State Senators can be convinced to vote "no" on this bill. At least this bill, unlike SB1330, only affects Association liens that are foreclosed. Nevertheless, the bill seems unnecessary in that our legislature already has enacted numerous reforms to assure that delinquent owners have protections and opportunities to address their assessment account without losing their homes.

Introduced Bills. As in past legislative sessions, many bills that would impact HOAs were introduced but did not progress through the process. Some of the more significant bills would have: (1) given Associations no authority to restrict parking or use of public streets; (2) allowed amendment of CC&Rs by a majority vote; (3) allowed a member to withdraw from ownership and use of a common area amenity and required a consequent reduction in the member's assessment obligation; (4) increased the number of days (from 45 to 50) prior to an election during which an HOA may not prohibit the display of political signs; (5) stipulated conditions under which a court must award reasonable attorney fees to the prevailing party in a case of a condominium or Planned Community owner filing a court action against the association's board of directors; (6) deemed approved a request for architectural review if no formal action is taken within 60 days of its receipt by the association; and (7) changed the open meeting law to require posting of the time, location and agenda for all Board meetings in an "official posting location."

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