



**Arizona Homeowners  
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**ARIZONA REVISED STATUTES (2012)**

**Planned Community and Homeowner Associations**

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## TITLE 33 Property

### **Buried under Title 33, Ch 4, Landlord and Tenant, Article 3, Conveyances and Deeds, and not under Ch 9 and 16, is the HOA transfer fee prohibition.**

#### 33-442. Prohibition on transfer fees; exceptions; definitions

- A. A provision in a declaration, covenant or any other document relating to real property in this state is not binding or enforceable against the real property or against any subsequent owner, purchaser, lienholder or other claimant on the property if it purports to do both of the following:
1. Bind successors in title to the specified real property.
  2. Obligate the transferee or transferor of all or part of the property to pay a fee or other charge to a declarant or a third person on transfer of an interest in the property or in consideration for permitting such a transfer. Regularly scheduled fees or charges shall not be considered payable on transfer of an interest if the fees or charges will be payable by the owner of the property regardless of whether or not the property is transferred, even if the obligation to pay does not commence until the trustee, declarant, builder or developer first conveys the property to a retail purchaser.
- B. A transfer fee provision prescribed by subsection A is unenforceable whether or not recorded and does not create a lien right and any lien purportedly arising out of an unenforceable provision prescribed by subsection A is invalid and unenforceable.
- C. This section does not apply to any of the following:
1. Any provision of a purchase contract, option, mortgage, security agreement, real property listing agreement or other agreement that obligates one party to the agreement to pay the other party as full or partial consideration for the agreement or for a waiver of rights under the agreement if the amount to be paid is:
    - (a) A loan assumption fee or similar fee charged by a lender that holds a lien on the property.
    - (b) A fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid.
  2. Any provision in a deed, memorandum or other document recorded for the purpose of providing record notice of an agreement prescribed in paragraph 1, subdivision (a) of this subsection.
  3. Any provision of a document that requires payment of a fee or charge to an association to be used exclusively for the purpose authorized in the document if both of the following apply:
    - (a) The fee being charged touches and concerns the land.
    - (b) No portion of the charge or fee is required to be passed through to a third party or declarant designated or identifiable by description in the document or in another document that is referenced in the document unless the third party is authorized in the document to manage real property within the association or was part of an approved development plan.
  4. Any rent, reimbursement, charge, fee or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, sublease, encumbrance or transfer of the lease.
  5. Any consideration payable to the holder of an option to purchase an interest in the real property or to the holder of a right of first refusal or first offer to purchase an interest in real property and paid for waiving, releasing or not exercising the option or right on transfer of the property to another person.
  6. Any fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership related to the real property owner by the transferor.
  7. Any fee or charge that is imposed by a document and that is payable to a nonprofit corporation for the sole purpose of supporting recreational activities within the association.
  8. Any fee, tax, assessment or other charge imposed by a governmental authority pursuant to applicable laws, ordinances or regulations.
  9. Any consideration payable by the transferee to the transferor for the interest in real property being transferred including any subsequent additional consideration for the property payable by the transferee based on any subsequent appreciation, development or sale of the property.
- D. Notwithstanding any provision in the document or purported lien, a transfer fee covenant or other document prescribed by subsection A or a lien purporting to secure payment under a transfer fee covenant or document prescribed by subsection A that is executed after the effective date of this section is not binding or enforceable. This section shall not be construed to imply that a transfer fee covenant or other document prescribed by subsection A that is executed before the effective date of this section is enforceable or valid.

E. For the purposes of this section:

1. "Association" means a nonprofit mandatory membership organization that is created pursuant to a declaration, covenant or other applicable law and that is comprised of the owners of homes, condominiums, cooperatives or manufactured homes or any other interest in real property.
2. "Transfer" means the sale, gift, conveyance, assignment, inheritance or other transfer of an interest in real property located in this state.

## Ch 12.

### 33-1801. Applicability; exemption

- A. This chapter applies to all planned communities.
- B. Notwithstanding any provisions in the community documents, this chapter does not apply to any school that receives monies from this state, including a charter school, and a school is exempt from regulation or any enforcement action by any homeowners' association that is subject to this chapter. With the exception of home schools as defined in section 15-802, schools shall not be established within the living units of a homeowners' association. The homeowners' association may enter into a contractual agreement with a school district or charter school to allow use of the homeowners' association's common areas by the school district or charter school.
- C. This chapter does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

### 33-1802. Definitions

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

1. "Association" means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
2. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.
3. "Declaration" means any instruments, however denominated, that establish a planned community and any amendment to those instruments.
4. "Planned community" means a real estate development which includes real estate owned and operated by a nonprofit corporation or unincorporated association of owners that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare plan or a timeshare association that is governed by chapter 20 of this title.

### 33-1803. Penalties; notice to member of violation

- A. Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty per cent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association. Unless reserved to the members of the association, the board of directors may impose reasonable charges for the late payment of assessments. A payment by a member is deemed late if it is unpaid fifteen or more days after its due date, unless the community documents provide for a longer period. Charges for the late payment of assessments are limited to the greater of fifteen dollars or ten per cent of the amount of the unpaid assessment. Any monies paid by the member for an unpaid assessment shall be applied first to the principal amount unpaid and then to the interest accrued.
- B. After notice and an opportunity to be heard, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association. Notwithstanding any provision in the community documents, the board of directors shall not impose a charge for a late payment of a penalty that exceeds the greater of fifteen dollars or ten per cent of the amount of the unpaid penalty. A payment is deemed late if it is unpaid fifteen or more days after its due date, unless the declaration, bylaws or rules of the association provide for a longer period. Any monies paid by a member for an unpaid penalty shall be applied first to the principal amount unpaid and then to

the interest accrued. Notice pursuant to this subsection shall include information pertaining to the manner in which the penalty shall be enforced.

C. A member who receives a written notice that the condition of the property owned by the member is in violation of the community documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response by certified mail within ten business days after the date of the notice. The response shall be sent to the address contained in the notice or in the recorded notice prescribed by section 33-1807, subsection J.

D. Within ten business days after receipt of the certified mail containing the response from the member, the association shall respond to the member with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:

1. The provision of the community documents that has allegedly been violated.
2. The date of the violation or the date the violation was observed.
3. The first and last name of the person or persons who observed the violation.
4. The process the member must follow to contest the notice.

E. Unless the information required in subsection D, paragraph 4 of this section is provided in the notice of violation, the association shall not proceed with any action to enforce the community documents, including the collection of attorney fees, before or during the time prescribed by subsection D of this section regarding the exchange of information between the association and the member. At any time before or after completion of the exchange of information pursuant to this section, the member may petition for a hearing pursuant to section 41-2198.01 if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in section 41-2198.01, subsection B.

#### 33-1804. Open meetings: exceptions

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record or videotape those portions of the meetings of the board of directors and meetings of the members that are open. The board of directors of the association may adopt reasonable rules governing the taping of open portions of the meetings of the board and the membership, but such rules shall not preclude such tape recording or videotaping by those attending. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned

pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

2. Pending or contemplated litigation.

3. Personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

4. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

5. Discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session.

B. Notwithstanding any provision in the community documents, all meetings of the members' association and the board shall be held in this state. A meeting of the members' association shall be held at least once each year. Special meetings of the members' association may be called by the president, by a majority of the board of directors or by members having at least twenty-five per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not fewer than ten nor more than fifty days in advance of any meeting of the members the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address for each lot, parcel or unit owner or to any other mailing address designated in writing by a member. The notice shall state the time and place of the meeting. A notice of any special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws, changes in assessments that require approval of the members and any proposal to remove a director or an officer. The failure of any member to receive actual notice of a meeting of the members does not affect the validity of any action taken at that meeting.

C. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, notice to members of meetings of the board of directors shall be given at least forty-eight hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the board of directors. An affidavit of notice by an officer of the corporation is prima facie evidence that notice was given as prescribed by this section. Notice to members of meetings of the board of directors is not required if emergency circumstances require action by the board before notice can be given. Any notice of a board meeting shall state the time and place of the meeting. The failure of any member to receive actual notice of a meeting of the board of directors does not affect the validity of any action taken at that meeting.

D. Notwithstanding any provision in the declaration, bylaws or other community documents, for meetings of the board of directors that are held after the termination of declarant control of the association, all of the following apply:

1. The agenda shall be available to all members attending.

2. An emergency meeting of the board of directors may be called to discuss business or take action that cannot be delayed until the next regularly scheduled

board meeting. The minutes of the emergency meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

3. A quorum of the board of directors may meet by means of a telephone conference if a speakerphone is available in the meeting room that allows board members and association members to hear all parties who are speaking during the meeting.

4. Any quorum of the board of directors that meets informally to discuss association business, including workshops, shall comply with the open meeting and notice provisions of this section without regard to whether the board votes or takes any action on any matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

#### 33-1805. Association financial and other records

A. Except as provided in subsection B of this section, all financial and other records of the association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member or any person designated by the member in writing as the member's representative, the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.

B. Books and records kept by or on behalf of the association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

1. Privileged communication between an attorney for the association and the association.
2. Pending litigation.
3. Meeting minutes or other records of a session of a board meeting that is not required to be open to all members pursuant to section 33-1804.
4. Personal, health or financial records of an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association, including records of the association directly related to the personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association.

5. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association.

C. The association shall not be required to disclose financial and other records of the association if disclosure would violate any state or federal law.

**33-1806. Resale of units; information required; fees; civil penalty; definition**

A. For planned communities with fewer than fifty units, a member shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale of the unit, and for planned communities with fifty or more units, the association shall mail or deliver to a purchaser or a purchaser's authorized agent within ten days after receipt of a written notice of a pending sale that contains the name and address of the purchaser, all of the following in either paper or electronic format:

1. A copy of the bylaws and the rules of the association.

2. A copy of the declaration.

3. A dated statement containing:

(a) The telephone number and address of a principal contact for the association, which may be an association manager, an association management company, an officer of the association or any other person designated by the board of directors.

(b) The amount of the common regular assessment and the unpaid common regular assessment, special assessment or other assessment, fee or charge currently due and payable from the selling member. If the request is made by a lienholder, escrow agent, member or person designated by a member pursuant to section 33-1807, failure to provide the information pursuant to this subdivision within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due against that property.

(c) A statement as to whether a portion of the unit is covered by insurance maintained by the association.

(d) The total amount of money held by the association as reserves.

(e) If the statement is being furnished by the association, a statement as to whether the records of the association reflect any alterations or improvements to the unit that violate the declaration. The association is not obligated to provide information regarding alterations or improvements that occurred more than six years before the proposed sale. Nothing in this subdivision relieves the seller of a unit from the obligation to disclose alterations or improvements to the unit that violate the declaration, nor precludes the association from taking action against the purchaser of a unit for violations that are apparent at the time of purchase and that are not reflected in the association's records.

(f) If the statement is being furnished by the member, a statement as to whether the member has any knowledge of any alterations or improvements to the unit that violate the declaration.

(g) A statement of case names and case numbers for pending litigation with respect to the unit filed by the association against the member or filed by the member against the association. The member shall not be required to disclose information



concerning such pending litigation that would violate any applicable rule of attorney-client privilege under Arizona law.

(h) A statement that provides "I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the association within fourteen calendar days.

4. A copy of the current operating budget of the association.

5. A copy of the most recent annual financial report of the association. If the report is more than ten pages, the association may provide a summary of the report in lieu of the entire report.

6. A copy of the most recent reserve study of the association, if any.

7. A statement summarizing any pending lawsuits, except those relating to the collection of assessments owed by members other than the selling member, in which the association is a named party, including the amount of any money claimed.

B. A purchaser or seller who is damaged by the failure of the member or the association to disclose the information required by subsection A of this section may pursue all remedies at law or in equity against the member or the association, whichever failed to comply with subsection A of this section, including the recovery of reasonable attorney fees.

C. The association may charge the member a fee of no more than an aggregate of four hundred dollars to compensate the association for the costs incurred in the preparation of a statement or other documents furnished by the association pursuant to this section for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of the property. In addition, the association may charge a rush fee of no more than one hundred dollars if the rush services are required to be performed within seventy-two hours after the request for rush services, and may charge a statement or other documents update fee of no more than fifty dollars if thirty days or more have passed since the date of the original disclosure statement or the date the documents were delivered. The association shall make available to any interested party the amount of any fee established from time to time by the association. If the aggregate fee for purposes of resale disclosure, lien estoppel and any other services related to the transfer or use of a property is less than four hundred dollars on January 1, 2010, the fee may increase at a rate of no more than twenty per cent per year based on the immediately preceding fiscal year's amount not to exceed the four hundred dollar aggregate fee. The association may charge the same fee without regard to whether the association is furnishing the statement or other documents in paper or electronic format.

D. The fees prescribed by this section shall be collected no earlier than at the close of escrow and may only be charged once to a member for that transaction between the parties specified in the notice required pursuant to subsection A of this section. An association shall not charge or collect a fee relating to services for resale disclosure, lien estoppel and any other services related to the transfer or use of a property except as specifically authorized in this section. An association that charges or collects a fee in violation of this section is subject to a civil penalty of no more than one thousand two hundred dollars.

E. This section applies to a managing agent for an association that is acting on behalf of the association.

F. A sale in which a public report is issued pursuant to sections 32-2183 and 32-2197.02 or a sale pursuant to section 32-2181.02 is exempt from this section.

G. For the purposes of this section, unless the context otherwise requires, "member" means the seller of the unit title and excludes any real estate salesperson or real estate broker who is licensed under title 32, chapter 20 and who is acting as a salesperson or broker, any escrow agent who is licensed under title 6, chapter 7 and who is acting as an escrow agent and also excludes a trustee of a deed of trust who is selling the property in a trustee's sale pursuant to chapter 6.1 of this title.

### 33-1807. Lien for assessments; priority; mechanics' and materialmen's liens

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner has been delinquent in the payment of monies secured by the lien, excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of one thousand two hundred dollars or more, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803, other than charges for late payment of assessments are not enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments may not be foreclosed and is effective only on conveyance of any interest in the real property.

B. A lien for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

C. Subsection B of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to chapter 8 of this title.

D. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate those liens have equal priority.

E. Recording of the declaration constitutes record notice and perfection of the lien for assessments, for charges for late payment of assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

G. This section does not prohibit:

1. Actions to recover amounts for which subsection A of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

H. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

I. On written request, the association shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of any unpaid assessment against the unit. The association shall furnish the statement within ten days after receipt of the request, and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection shall extinguish any lien for any unpaid assessment then due.

J. The association shall record in the office of the county recorder in the county in which the planned community is located a notice stating the name of the association or designated agent or management company for the association, the address for the association and the telephone number of the association or its designated agent or management company. The notice shall include the name of the planned community, the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. If an association's address, designated agent or management company changes, the association shall amend its notice or record a new notice within ninety days after the change.

K. Notwithstanding any provision in the community documents or in any contract between the association and a management company, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, for unpaid charges for late payment of those assessments, for reasonable collection fees and for unpaid attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

[33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political activities](#)

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by an association member on that member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles, may limit the member to displaying no more than two flags at once and may limit the height of the flagpole to no more than the height of the rooftop of the member's home but shall not prohibit the installation of a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is no more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet. For the purposes of this subsection, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

D. Notwithstanding any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.
2. The signs are removed within one hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are no taller than three feet in height.
5. The signs are professionally manufactured or produced.

E. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

F. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, placement of or the indoor or outdoor

display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit the use of signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

G. Notwithstanding any provision in the community documents, an association shall not prohibit door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door to door political activity from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

H. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

I. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

J. A planned community is not required to comply with subsection G if the planned community restricts vehicular or pedestrian access to the planned community.

Nothing in this section requires a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

K. An association or managing agent that violates subsection F of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months from the date of the violation.

33-1809. Parking; public service and public safety emergency vehicles; definition

A. Notwithstanding any provision in the community documents, an association shall not prohibit a resident from parking a motor vehicle on a street or driveway in the planned community if the vehicle is required to be available at designated periods at the person's residence as a condition of the person's employment and either of the following applies:

1. The resident is employed by a public service corporation that is regulated by the corporation commission, an entity regulated by the federal energy regulatory commission or a municipal utility and the public service corporation or municipal utility is required to prepare for emergency deployments of personnel and equipment for repair or maintenance of natural gas, electrical, telecommunications or water infrastructure, the vehicle has a gross vehicle weight rating of twenty thousand pounds or less and is owned or operated by the public service corporation or municipal utility and the vehicle bears an official emblem or other visible designation of the public service corporation or municipal utility.

2. The resident is employed by a public safety agency, including police or fire service for a federal, state, local or tribal agency or a private fire service provider or an ambulance service provider that is regulated pursuant to title 36, chapter 21.1, and the vehicle has a gross vehicle weight rating of ten thousand pounds or less and bears an official emblem or other visible designation of that agency.

B. For the purposes of this section, "telecommunications" means 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.

33-1810. Board of directors; annual audit

Unless any provision in the planned community documents requires an annual audit by a certified public accountant, the board of directors shall provide for an annual financial audit, review or compilation of the association. The audit, review or compilation shall be completed no later than one hundred eighty days after the end of the association's fiscal year and shall be made available upon request to the members within thirty days after its completion.

33-1811. Board of directors; contracts; conflict

If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the

board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this section is void and unenforceable.

33-1812. Proxies; absentee ballots; definition

A. Notwithstanding any provision in the community documents, after termination of the period of declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The association shall provide for votes to be cast in person and by absentee ballot and may provide for voting by some other form of delivery.

Notwithstanding section 10-3708 or the provisions of the community documents, any action taken at an annual, regular or special meeting of the members shall comply with all of the following if absentee ballots are used:

1. The absentee ballot shall set forth each proposed action.
2. The absentee ballot shall provide an opportunity to vote for or against each proposed action.
3. The absentee ballot is valid for only one specified election or meeting of the members and expires automatically after the completion of the election or meeting.
4. The absentee ballot specifies the time and date by which the ballot must be delivered to the board of directors in order to be counted, which shall be at least seven days after the date that the board delivers the unvoted absentee ballot to the member.
5. The absentee ballot does not authorize another person to cast votes on behalf of the member.

B. Votes cast by absentee ballot or other form of delivery are valid for the purpose of establishing a quorum.

C. Notwithstanding subsection A of this section, an association for a timeshare plan as defined in section 32-2197 may permit votes by a proxy that is duly executed by a unit owner.

D. For the purposes of this section, "period of declarant control" means the time during which the declarant or persons designated by the declarant may elect or appoint the members of the board of directors pursuant to the community documents or by virtue of superior voting power.

33-1813. Removal of board member; special meeting

A. Notwithstanding any provision of the declaration or bylaws to the contrary, the members, by a majority vote of members entitled to vote and voting on the matter at a meeting of the members called pursuant to this section at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. For purposes of calling for removal of a member of the board of directors, other than a member appointed by the declarant, the following apply:

1. In an association with one thousand or fewer members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by

the number of persons who are entitled to cast at least twenty-five per cent of the votes in the association or one hundred votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association as prescribed by section 33-1804, subsection B.

2. Notwithstanding section 33-1804, subsection B, in an association with more than one thousand members, on receipt of a petition that calls for removal of a member of the board of directors and that is signed by the number of persons who are entitled to cast at least ten per cent of the votes in the association or one thousand votes in the association, whichever is less, the board shall call and provide written notice of a special meeting of the association. The board shall provide written notice of a special meeting as prescribed by section 33-1804, subsection B.

3. The special meeting shall be called, noticed and held within thirty days after receipt of the petition.

4. For purposes of a special meeting called pursuant to this subsection, a quorum is present if the number of owners to whom at least twenty per cent of the votes or one thousand votes, whichever is less, are allocated is present at the meeting in person or as otherwise permitted by law.

5. If a civil action is filed regarding the removal of a board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.

6. The board of directors shall retain all documents and other records relating to the proposed removal of the member of the board of directors for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to section 33-1805.

7. A petition that calls for the removal of the same member of the board of directors shall not be submitted more than once during each term of office for that member.

B. For an association in which board members are elected from separately designated voting districts, a member of the board of directors, other than a member appointed by the declarant, may be removed only by a vote of the members from that voting district, and only the members from that voting district are eligible to vote on the matter or be counted for purposes of determining a quorum.

#### 33-1814. Slum property; professional management

For any residential rental units that have been declared a slum property by the city or town pursuant to section 33-1905 and that are in the planned community, the association is responsible for enforcing any requirement for a licensed property management firm that is imposed by a city or town pursuant to section 33-1906.

#### 33-1815. Association authority; commercial signage

Notwithstanding any provision in the community documents, after an association has approved a commercial sign, including its registered trademark that is located on properties zoned for commercial use in the planned community, the association, including any subsequently elected board of directors, may not revoke or modify its approval of that sign if the owner or operator of the sign has received approval for the sign from the local or county governing body with jurisdiction over the sign.



33-1816. Solar energy devices; reasonable restrictions; fees and costs

A. Notwithstanding any provision in the community documents, an association shall not prohibit the installation or use of a solar energy device as defined in section 44-1761.

B. An association may adopt reasonable rules regarding the placement of a solar energy device if those rules do not prevent the installation, impair the functioning of the device or restrict its use or adversely affect the cost or efficiency of the device.

C. Notwithstanding any provision of the community documents, the court shall award reasonable attorney fees and costs to any party who substantially prevails in an action against the board of directors of the association for a violation of this section.

33-1817. Declaration amendment; design, architectural committees; review

Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated:  
(a) If the association documents permit the association to charge the member a security deposit and if the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, the deposit shall be placed in a trust account with the following instructions:

(i) The cost of the trust account shall be shared equally between the association and the member.

(ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.

(iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans as amended and that have come to the attention of the association.

(d) Within thirty business days after the second formal review, the association shall provide to the member, a copy of the written report specifying any deficiencies,

violations or unapproved variations from the approved plans as amended that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

# ARIZONA CONSTITUTION

## Article 2. Declaration of Rights

### 1. Fundamental principles; recurrence to

Section 1. A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

### 2. Political power; purpose of government

Section 2. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

### 4. Due process of law

Section 4. No person shall be deprived of life, liberty, or property without due process of law.

### 8. Right to privacy

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

### 9. Irrevocable grants of privileges, franchises or immunities

Section 9. No law granting irrevocably any privilege, franchise, or immunity shall be enacted.

### 13. Equal privileges and immunities

Section 13. No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

### 15. Excessive bail; cruel and unusual punishment

Section 15. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

### 25. Bills of attainder; ex post facto laws; impairment of contract obligations

Section 25. No bill of attainder, ex-post-facto law, or law impairing the obligation of a contract, shall ever be enacted.

### 32. Constitutional provisions mandatory

Section 32. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

### 33. Reservation of rights

Section 33. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

## Article 13

## MUNICIPAL CORPORATIONS

### 6. Franchises; restrictions

Section 6. No grant, extension, or renewal of any franchise or other use of the streets, alleys, or other public grounds, or ways, of any municipality shall divest the state or any of its subdivisions of its or their control and regulation of such use and enjoyment; nor shall the power to regulate charges for public services be surrendered; and no exclusive franchise shall ever be granted.

### 7. Irrigation and other districts as political subdivisions

Section 7. Irrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and tax levying public improvement districts, now or hereafter organized pursuant to law, shall be political subdivisions of the state, and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subdivisions under this constitution or any law of the state or of the United States; but all such districts shall be exempt from the provisions of sections 7 and 8 of article IX of this constitution.

## Complaint Procedures for HOAs

Sec. 12. Joint legislative budget committee review; condominium and planned community fees

On or before December 1, 2007, the joint legislative budget committee shall review and make recommendations to the legislature regarding the filing fees charged to parties filing for an administrative hearing pursuant to section 41-2198.01, subsection B, Arizona Revised Statutes, as amended by this act, regarding condominiums and planned communities. The joint legislative budget committee shall recommend a level of filing fee appropriate to ensure the hearing officer program is fiscally sound and self-supporting.

APPROVED BY THE GOVERNOR JUNE 15, 2006. Sess. L. ch. 324 (2006).

## **TITLE 41 State Government**

### **Chapter 6 ADMINISTRATIVE PROCEDURE**

**(Article 10 is not presented here. It describes the OAH procedures. Please visit this Article online).**

<b>Article 10</b>	<b>Uniform Administrative Hearing Procedures</b>
<a href="#">41-1092</a>	Definitions
<a href="#">41-1092.01</a>	Office of administrative hearings; director; powers and duties; fund
<a href="#">41-1092.02</a>	Appealable agency actions; application of procedural rules; exemption from article
<a href="#">41-1092.03</a>	Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability
<a href="#">41-1092.04</a>	Service of documents
<a href="#">41-1092.05</a>	Scheduling of hearings; prehearing conferences
<a href="#">41-1092.06</a>	Appeals of agency actions; informal settlement conferences; applicability
<a href="#">41-1092.07</a>	Hearings

**A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded.** The written decision shall contain a concise explanation of the reasons supporting the decision. The administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

**C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.**

D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

**F. The decision of the agency head is the final administrative decision unless either:**

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in

subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

[41-1092.09](#)

Rehearing or review

[41-1092.10](#)

Compulsory testimony; privilege against self-incrimination

[41-1092.11](#)

Licenses; renewal; revocation; suspension; annulment; withdrawal

[41-1092.12](#)

Private right of action; recovery of costs and fees; definitions

## C. Chapter 16 Article 1 Administrative Hearings

[41-2198](#)

Administrative adjudication of complaints

[41-2198.01](#)

Hearing; rights and procedures

[41-2198.02](#)

Orders; penalties; disposition

[41-2198.03](#)

Scope of hearing

[41-2198.04](#)

Rehearing; appeal

[41-2198.05](#)

Condominium and planned community hearing office fund

### [41-2198. Administrative adjudication of complaints](#)

Pursuant to chapter 6, article 10 of this title, an administrative law judge shall adjudicate complaints regarding and ensure compliance with:

1. The Arizona mobile home parks residential landlord and tenant act.
2. Title 33, chapter 9 and condominium documents.
3. Title 33, chapter 16 and planned community documents.

### [41-2198.01. Hearing; rights and procedures](#)

A. A person who is subject to title 33, chapter 11 or a party to a rental agreement entered into pursuant to title 33, chapter 11 may petition the department for a hearing concerning violations of the Arizona mobile home parks residential landlord and tenant act by filing a petition with the department and paying a nonrefundable filing fee in an amount to be established by the director. All monies collected shall be deposited in the state general fund and are not refundable.

B. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community

documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a nonrefundable filing fee in an amount to be established by the director. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 41-2198.05. The department does not have jurisdiction to hear:

1. Any dispute among or between owners to which the association is not a party.
  2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to title 32, chapter 20, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.
- C. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.
- D. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days of mailing of the petition showing cause, if any, why the petition should be dismissed.
- E. After receiving the response, the director or the director's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The director may dismiss a petition for hearing if it appears to the director's satisfaction that the disputed issue or issues have been resolved by the parties.
- F. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the director shall issue a default decision.
- G. Informal disposition may be made of any contested case.
- H. Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if such authorization is filed in writing with the department.
- I. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:
1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.
  2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's or employee's duties relating to the management or operation of the corporation.

[41-2198.02. Orders: penalties: disposition](#)

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. For purposes of actions brought under the Arizona mobile home parks residential landlord and tenant act, the civil penalty shall not exceed five hundred dollars. All monies collected pursuant to this article shall be deposited in the state general fund to be used to offset the cost of administering the administrative law judge function, except that monies collected from disputes involving condominiums or planned communities as prescribed in section 41-2198.01, subsection B shall be deposited in the condominium and planned community hearing office fund



established by section 41-2198.05. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 41-2198.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 41-2198.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. Notwithstanding sections 41-1092.08, subsection B and 41-1092.09, **an order issued by the administrative law judge in an action regarding a condominium or planned community is the final administrative decision and is not subject to a request for rehearing. The order issued by the administrative law judge is enforceable through contempt of court proceedings.**

#### 41-2198.03. Scope of hearing

A. The administrative law judge may hear and adjudicate all matters relating to the Arizona mobile home parks residential landlord and tenant act and rules adopted pursuant to this article, except that the administrative law judge shall not hear matters pertaining to rental increases pursuant to section 33-1413, subsection G or I.

B. This section shall not be construed to limit the jurisdiction of the courts of this state to hear and decide matters pursuant to the Arizona mobile home parks residential landlord and tenant act, the statutes or condominium documents that regulate condominiums or the statutes or community documents that regulate planned communities.

#### 41-2198.04. Rehearing; appeal

A. Except for an action relating to condominium documents or planned community documents or the statutes regulating condominiums or planned communities, a person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the director a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the director shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 41-2198.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the director shall include a statement of the particular grounds and reasons for the director's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.
2. Such representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

#### 41-2198.05. Condominium and planned community hearing office fund

A. The condominium and planned community hearing office fund is established in the department to be administered by the director. Monies in the fund are continuously appropriated. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies in the condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to section 41-2198.01, subsection B. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to section 41-2198.01, subsection B.

APPEALS FROM ADMINISTRATIVE FINAL DECISIONS (may go all the way to the AZ Supreme Court).

## **Title 12 - Courts and Civil Proceedings**

### Chapter 3, Article 5 Recovery of Costs

#### 12-341.01. Recovery of attorney fees

A. In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees. If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. This section shall in no manner be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.

B. The award of reasonable attorney fees pursuant to subsection A should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.

C. The court shall award reasonable attorney fees in any contested action upon clear and convincing evidence that the claim or defense constitutes harassment, is groundless and is not made in good faith. In making the award, the court may consider any evidence it deems appropriate and shall receive this evidence during a trial on the merits of the cause, or separately, regarding the amount of fees it deems in the best interest of the litigating parties.

D. The court and not a jury shall award reasonable attorney fees under this section.

#### 12-349. Unjustified actions; attorney fees, expenses and double damages; exceptions; definition

A. Except as otherwise provided by and not inconsistent with another statute, in any civil action commenced or appealed in a court of record in this state, the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and political subdivisions of this state, if the attorney or party does any of the following:

1. Brings or defends a claim without substantial justification.
2. Brings or defends a claim solely or primarily for delay or harassment.
3. Unreasonably expands or delays the proceeding.
4. Engages in abuse of discovery.

B. The court may allocate the payment of attorney fees among the offending attorneys and parties, jointly or severally, and may assess separate amounts against an offending attorney or party.

C. Attorney fees shall not be assessed if after filing an action a voluntary dismissal is filed for any claim or defense within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that the claim or defense was without substantial justification.

D. This section does not apply to the adjudication of civil traffic violations or to any proceedings brought by this state pursuant to title 13.

E. Notwithstanding any other law, this state and political subdivisions of this state may be awarded attorney fees pursuant to this section.

F. In this section, "without substantial justification" means that the claim or defense constitutes harassment, is groundless and is not made in good faith.

#### 12-350. Determination of award; reasons; factors

In awarding attorney fees pursuant to section 12-349, the court shall set forth the specific reasons for the award and may include the following factors, as relevant, in its consideration:

1. The extent of any effort made to determine the validity of a claim before the claim was asserted.
2. The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid.
3. The availability of facts to assist a party in determining the validity of a claim or defense.
4. The relative financial positions of the parties involved.
5. Whether the action was prosecuted or defended, in whole or in part, in bad faith.
6. Whether issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict.
7. The extent to which the party prevailed with respect to the amount and number of claims in controversy.
8. The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

### Chapter 6.

#### Article 15. Public Participation - SLAPP

#### **12-752. Strategic lawsuits against public participation; motion to dismiss**

A. In any legal action that involves a party's exercise of the right of petition, the defending party may file a motion to dismiss the action under this section. When possible, the court shall give calendar preference to an action that is brought under this subsection and shall conduct an expedited hearing after the motion is filed with the court and notice of the motion has been served as provided by court rule.

B. The court shall grant the motion unless the party against whom the motion is made shows that the moving party's exercise of the right of petition did not contain any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual compensable injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating facts on which the liability or defense is based. At the request of the moving party, the court shall make findings whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the court finds that the lawsuit was brought to deter or prevent the exercise of constitutional rights or otherwise brought for an improper purpose, the moving party is encouraged to pursue additional sanctions as provided by court rule.

C. The motion to dismiss may be filed within ninety days after the service of the complaint or, in the court's discretion, at any later time on terms that the court deems proper.

D. If the court grants the motion to dismiss, the court shall award the moving party costs and reasonable attorney fees, including those incurred for the motion. If the court finds that a motion to dismiss is frivolous or solely intended to delay, the court shall award costs and reasonable attorney fees to the prevailing party on the motion. For the purposes of this subsection, "costs" means all costs that are reasonably incurred in connection with a motion to dismiss pursuant to this section and includes filing fees, record preparation and document copying fees, documented time away from employment to confer with counsel or attend case related proceedings, expert witness fees, travel expenses and any other costs that the court deems appropriate.

E. This article does not:

1. Affect, limit or preclude the right of the moving party to any remedy otherwise authorized by law.
2. Apply to an enforcement action that is brought in the name of this state or a political subdivision of this state.
3. Create any privileges or immunities or otherwise affect, limit or preclude any privileges or immunities authorized by law.
4. Limit or preclude a legislative or executive body or a public agency from enforcing the rules of procedure and rules of order of the body or agency.

## Chapter 7 SPECIAL ACTIONS AND PROCEEDINGS

### **Article 6 Judicial Review of Administrative Decisions**

[12-901](#) Definitions

[12-902](#) Scope of article

[12-903](#) Power of supreme court to make procedural rules

[12-904](#) Commencement of action; transmission of record

**A. An action to review a final administrative decision shall be commenced by filing a complaint within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected.** The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

**B. Within ten days after filing a complaint pursuant to this article, the party seeking judicial review shall file a notice of the action with the office of administrative hearings** or the agency that conducted the hearing, and the office of administrative hearings or the agency that conducted the hearing shall transmit the record to the superior court. The record shall consist of the following:

1. The original agency action from which review is sought.

2. Any motions, memoranda or other documents submitted by the parties to the appeal.
3. Any exhibits admitted as evidence at the administrative hearing.
4. The decision by the administrative law judge and any revisions or modifications to the decision.
5. A copy of the transcript of the administrative hearing, if the party seeking judicial review desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the office of administrative hearings or the agency that conducted the hearing within ten days after receiving notice of the complaint and providing for preparation of the transcript at the party's own expense.

<a href="#">12-905</a>	Jurisdiction and venue
<a href="#">12-906</a>	Service of process
<a href="#">12-907</a>	Appearance of defendants
<a href="#">12-908</a>	Parties
<a href="#">12-909</a>	Pleadings and record on review
<a href="#">12-910</a>	<u>Scope of review</u>

A. An action to review **a final administrative decision** shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a complaint, the court shall hold an evidentiary hearing, including testimony and argument, to the extent necessary to make the determination required by subsection E of this section. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.

**B. Relevant and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:**

1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.
2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.

C. For review of final administrative decisions of agencies that are exempt from sections 41-1092.03 through 41-1092.11, pursuant to section 41-1092.02, the trial shall be de novo if trial de novo is demanded in the complaint or answer of a defendant other than the agency and if a hearing was not held by the agency or the proceedings before the agency were not stenographically reported or mechanically recorded so that a transcript might be made. On demand of any party, if a trial de novo is available under this section, it may be with a jury, except that a trial of an administrative decision under section 25-522 shall be to the court.

D. The record in the superior court shall consist of the record of the administrative proceeding, and the record of any evidentiary hearing, or the record of the trial de novo.

**E. The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.**

- [12-911](#) Powers of trial court
- [12-912](#) Costs
- [12-913](#) Appellate review
- [12-914](#) Rules of civil procedure

## **Title 10, Corporations**

### Chapter 31, Article 1, Board of Directors

#### 10-3830. General standards for directors

A. A director's duties, including duties as a member of a committee, shall be discharged:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the director reasonably believes to be in the best interests of the corporation.

B. In discharging duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more officers or employees of the corporation whom the director reasonably believes are reliable and competent in the matters presented.
2. Legal counsel, public accountants or other person as to matters the director reasonably believes are within the person's professional or expert competence.
3. A committee of or appointed by the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
4. In the case of corporations organized for religious purposes, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

C. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection B unwarranted.

D. A director is not liable for any action taken as a director or any failure to take any action if the director's duties were performed in compliance with this section. In any proceeding commenced under this section or any other provision of this chapter, a director has all of the defenses and presumptions ordinarily available to a director. A director is presumed in all cases to have acted, failed to act or otherwise discharged such director's duties in accordance with subsection A. The burden is on the party challenging a director's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.

E. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of that property.

## **E. TITLE 33 Homestead Exemption**

### Chapter 8

### **HOMESTEAD AND PERSONAL PROPERTY EXEMPTION**

#### **Article 1 Homesteads and Homestead Exemption**

#### [33-1101](#)

Homestead exemptions; persons entitled to hold homesteads

#### [33-1102](#)

Exemption by operation of law; designation of multiple properties on creditor's request;

[33-1103](#)

recording

Effective date of homestead exemption; extent of exemption; exceptions

[33-1104](#)

Abandonment of homestead; encumbrance of homestead

[33-1105](#)

Sale by judgment creditor of property subject to homestead exemption

[33-1101. Homestead exemptions; persons entitled to hold homesteads](#)

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding one hundred fifty thousand dollars in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed one hundred fifty thousand dollars in value.

C. The homestead exemption, not exceeding the value provided for in subsection A, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under this section.

[33-1102. Exemption by operation of law; designation of multiple properties on creditor's request; recording](#)

A. A person who is entitled to a homestead exemption as prescribed by section 33-1101 holds that exemption by operation of law and no written claim or recording is required. If a person has more than one property interest to which a homestead exemption may reasonably apply, a creditor may require the person to designate which property, if any, is protected by the homestead exemption. The creditor shall demand the designation by sending a letter by certified mail, return receipt requested, to each address of the person which may reasonably be protected by the homestead exemption. The person shall designate the property by recording a homestead exemption in the office of the county recorder where the property is located or by sending the creditor a certified letter, return receipt requested, within thirty days of receiving the creditor's demand letter. If the person receives the creditor's letter and fails to respond as provided by this subsection, the person may only assert the homestead exemption by recording a claim in the office of the county recorder where the property is located.

B. If the person is married, the homestead may be selected from the community property, the joint property or the separate property of the person.

[33-1103. Effective date of homestead exemption; extent of exemption; exceptions](#)

A. The homestead provided for in section 33-1101, subsection A is exempt from process and from sale under a judgment or lien, except:

1. A consensual lien, including a mortgage or deed of trust, or contract of conveyance.
2. A lien for labor or materials claimed pursuant to section 33-981.
3. To the extent that a judgment or other lien may be satisfied from the equity of the debtor exceeding the homestead exemption under section 33-1101.

B. A sale as described in subsection A of this section and not excepted by subsection A, paragraph 1, 2 or 3 of this section is invalid and does not convey an interest in the homestead, whether made under a judgment existing before or after homestead is established.

#### 33-1104. Abandonment of homestead; encumbrance of homestead

A. A homestead may be abandoned by any of the following:

1. A declaration of abandonment or waiver.
2. A transfer of the homestead property by deed of conveyance or contract for conveyance.
3. A permanent removal of the claimant from the residence or the state. A claimant may remove from the homestead for up to two years without an abandonment or a waiver of the exemption.

B. A declaration of abandonment or waiver shall be executed by the claimant and acknowledged. A declaration of abandonment or waiver is effective only from the time of its recording in the office of the county recorder in the county in which the homestead property is located.

C. This article shall not be construed to repeal the provisions of section 25-214, subsection C, pertaining to the acquisition, conveyance or encumbrance of community property.

D. Any recorded consensual lien, including a mortgage or deed of trust, encumbering homestead property shall not be subject to or affected by the homestead claim or exemption.

E. Notwithstanding the provisions of subsection A, paragraph 2 of this section, a transfer of the homestead property by deed of conveyance or contract for conveyance under a trust, as defined in section 14-1201, in which the claimant retains the power to administer and revoke the trust shall not constitute an abandonment of the homestead.

#### 33-1105. Sale by judgment creditor of property subject to homestead exemption

A judgment creditor other than a mortgagee or beneficiary under a trust deed may elect to sell by judicial sale as specified in title 12 the property in which the judgment debtor has a homestead under section 33-1101, subsection A, provided that the judgment debtor's interest in the property shall exceed the sum of the judgment debtor's homestead plus the amount of any consensual liens on the property having priority to the judgment. A bid shall not be accepted by the officer in charge of a sale under this section which does not exceed the amount of the judgment debtor's homestead plus the amount of any consensual liens on the property having a priority to the judgment plus the costs of the sale allowable under title 12. After receipt of a sufficient bid, the officer shall sell the property. From the proceeds, the officer shall first pay the amount of the homestead to the judgment debtor plus the amount of any consensual liens on the property having a priority to the judgment and then pay the costs of the sale. The remaining proceeds shall be applied in accordance with the provisions of section 12-1562, subsection A. If the sale does not occur, either because of voluntary abandonment by the judgment creditor or because no sufficient bid is made, the judgment creditor may not charge any costs or attorney fees incurred in connection with the sale against the judgment debtor by addition to the judgment or otherwise.



