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### **The hostile face of Arizona's DFBLS to HOA dispute resolution**

Allow me to recapitulate the events surrounding the Arizona DFBLS (Department of Fire, Building and Life Safety) agency's HOA dispute filing fees.

SB 1148 (Ariz. Sess. L. Ch. 185 (2011)) affects only 3 statutes. Other than the changes to these sections, 41-2141, 41-2198.02 and 41-2198.04, all 2006 statutes (HB2824, Ariz. Sess. L. Ch. 324) remain valid. ARS 41-2141 removes the Phoenix Townhouse v. Meritt superior court default order enjoining DFBLS from receiving HOA complaints, and renders the Gelb appellate opinion moot.

The new laws do 3 things:

1. It re-establishes authority for DFBLS to hear HOA disputes;
2. It places an additional burden on appeals to the civil courts by requiring the party to first seek Dept. review, that is, DFBLS to review the decision, that we already know is anti-homeowner;
3. It clearly states the legislative intent for the law: consumer protection in a cost effective manner. Sec. 4, subsection 4 reads, emphasis added,

“The Legislature further finds [OAH adjudication of HOA disputes] . . . will provide an important consumer protection for owners in condominiums and planned communities and will efficiently and effectively provide for resolution of these common interest community disputes without the expense, formality and difficulty of requiring a trial in the superior court in every instance, and will do so without the cost and bureaucratic complexity of creating an entirely new administrative body to perform these important functions, while still maintaining the ability and right to recourse in the superior court, and without threat to the core functions of the judiciary”.

Clearly, the intent of the Legislature is **not** to have DFBLS operate on a self-supporting basis. Nothing in the new laws, or in the HB2824 **statutes**, requires the Director to have HOA adjudication be self-supporting. The relevant statute, 41-2198.01(B) in either the 2006 or 2011 laws, mandates no such a restriction. All that 41-2198.01(B) grants to the Director is to establish the fee.

The argument that HOA adjudication be self supporting comes from the 2006 law, Sec. 12, "*Joint legislative budget committee review; condominium and planned community fees.*" It speaks to a specific event to occur before December 2007 for the JLBC to recommend a fee to ensure that the "*program is fiscally sound and self-supporting.*" This Section 12, unlike Sec 4 above, does not declare the intention of the Legislature to make the program self-supporting. In the legislative "give and take", the fee amount was controversial and was set, by agreement, to just \$550 after the legislation was passed into law (that's why there is no specific amount in the statute, and the mobile home fee, which was set at \$50, was also changed to an unspecified amount).

**However, please note that DFBLS is not listed inder ARS 41-1092(7), definitions by name of agency, as a "*self-supporting regulatory agency.*"**

Please also note that, as specified in Sec. 12, it was the JLBC's obligation to set a self-supporting fee prior to December 2007, and not the DFBLS Director's mandate for self-supporting fees. He is permitted to set a fee, as per 41-2198.01(B), but no where has he been granted authority to bypass the APA rule making statutes, nor to mandate a self-supporting fee. In fact, according to its minutes, the arguments for a fee increase were rejected by the JLBC on November 15, 2006,

**Item 5 – Joint Legislative Budget Committee – Review of Filing Fee for Administrative Hearing Pursuant to the Condominium and Planned Community Program**

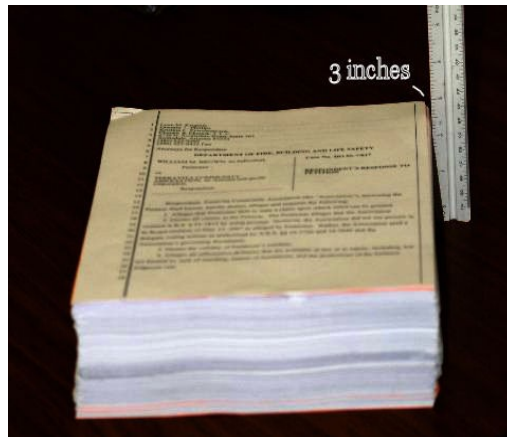
Representative Pearce moved that the Committee give a favorable review of the \$550 filing fee with the provision that by January 1, 2008 the Department of Fire, Building and Life Safety and the Office of Administrative Hearings report back to JLBC Staff regarding the number of cases files, the number of cases resolved, the average cost per case, and the fund balance for the Condominium and Planned Community Hearing Office Fund. **The motion carried.**

I am not aware of any further events relating to a fee increase that is documented for the public, and no public notice for the justification for such an increase on the DFBLS or OAH websites, except that the fee was raised to \$2,000, and still exists, for filing a multiple complaint. This action remains highly questionable as to its validity.

If DFBLS wishes to change the filing fee for HOA adjudication, it must follow the APA rule-making statutes, which requires publication in the Arizona Administrative Register

(found on the SOS website) and a public hearing to be held. At which time it should also be prepared to defend the validity of the \$2,000 fee for multiple complaints. And the Director of OAH should be prepared to defend its data on costs in reference to the numerous filings by HOA attorneys of voluminous documents not material to the complaint on hand.

I have on record a 3 inch filing – on a question of delegate voting as a violation of the absentee ballot law -- with an incorrect case number, most likely as a result of a copy of another case and a failure to change the case number. Why should homeowners, who had filed 100% of the complaints, pay for an abuse of process by HOA attorneys?



So I now ask, as the DFBS website still informs viewers that there may be a fee increase, placed there soon after SB 1148 became law, “Why is there this heightened concern for HOA filing fees and not other fees? Have the pro-HOA special interests been at work making suggestions to, or whispering in the ears of, DFBS Director Palma to increase the fees as part of their effort to stop justice for homeowners in HOAs? The same group that lost 42% of their cases before OAH, who had finally brought down the 2006 law as unconstitutional, and now threatens to do so again with SB 1148.

Under Homeowners Associations, why is there no information being provided to homeowners who may seek to file a complaint, except to have them read the law? Why is there no email contact provided for the public? For a \$50 fee, DFBS provides plenty of information under its mobile home obligations. And much, much more under its Fire Marshall and Manufacturing obligations. **Why is DFBS presenting this hostile face to homeowners in HOAs seeking justice under the law?**