

Regulating HOAs Violates Freedom of Contract

By [Nick Dranias](#)

The Arizona Senate is considering a bill that would regulate homeowner associations by imposing government mandates on HOA contracts.



This bill runs afoul of freedom of contract, the principle that the government should not interfere with agreements reached by willing parties. This principle recognizes that the state should not superintend the wisdom of contractual relationships.

Because the relationship between homeowner associations and their members is a voluntary contract, any law that overrides that relationship violates this principle. Moreover, such laws risk violating Article 2, § 25 of the Arizona Constitution, which provides, "No law impairing the obligation of a contract, shall ever be enacted."

If enacted into law, the bill under consideration would override "loser pays" provisions in homeowner association agreements that require a losing litigant to reimburse the association for the attorneys' fees and costs incurred in defending a lawsuit. The law would thereby erase provisions that are meant to discourage litigation. This threatens homeowner associations and their members with a greater risk of litigation and higher assessments.

The regulation of homeowner associations is unwise and unconstitutional. Even if a few abusive homeowner associations deserve to be sued more often, it would be ham-fisted to encourage an across-the-board increase in litigation against all associations. If freedom of contract means anything in this state, it means that we

freedom of contract means anything in this state, it means that we shouldn't all suffer together when the state overreaches in deciding what's best for us.

Nick Dranias is the Director of the Center for Constitutional Government at the Goldwater Institute.

Learn more:

[Arizona State Constitution](#)

Arizona Legislature: [SB 1162](#)

Arizona Republic: [HOA board members discuss Senate bills](#)

Contact

Nick Dranias

Goldwater Institute

ndranias@goldwaterinstitute.org