



Arizona State Senate Issue Brief

December 6, 2022

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Issue Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

HOMEOWNERS' ASSOCIATIONS

INTRODUCTION

A planned community association or condominium unit owners' association (HOA) is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. The four defining characteristics of all HOAs are:

- all owners are automatically members;
- governing documents create mutual obligations;
- mandatory fees or assessments are generally levied against owners and used for the operation of the association; and
- owners share a property interest in the community.

PLANNED COMMUNITY VS. CONDOMINIUM

A *planned community* is a real estate development that includes property owned and operated by a nonprofit corporation or unincorporated association of owners that is created pursuant to a recorded declaration for managing, maintaining or improving the property.¹

A *condominium* refers to a real estate development in which certain portions are designated for separate ownership (units) and the remainder is designated for common ownership by the unit owners.² A condominium may be created by recording a declaration in the county in which the condominium is located.³ Statute requires the organization of a profit, nonprofit or unincorporated unit owners' association to be no later than the date the first unit is conveyed.⁴

The principal distinction between planned community and condominium HOAs involves the ownership of the common areas or common elements. In a planned community, the *common areas*, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common

¹ [A.R.S. § 33-1802](#)

² [A.R.S. § 33-1202](#)

³ [A.R.S. § 33-1211](#)

⁴ [A.R.S. § 33-1241](#)

areas, including an airport, but do not include golf courses. In a condominium, each unit owner has an undivided percentage interest in the *common elements*, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas.⁵

THE HOA'S AUTHORITY

An HOA derives its power and authority from a variety of legal documents, including the HOA's governing documents and federal and state statutes and regulations.

Governing Documents

The governing documents create the legal foundation and organizational framework of an HOA. They consist of the Declaration of Covenants, Conditions and Restrictions (CC&Rs), the articles of incorporation, the bylaws, and the rules and regulations.

The CC&Rs constitute the enabling document, which is recorded with a county recorder and empowers the HOA to control certain aspects of property use within the development, often including oversight and approval authority over the construction and alteration of homes. When a person buys a home in such a development, the person receives a copy of the CC&Rs and agrees to be bound by the document's terms. Thus, the CC&Rs form an enforceable contract between the HOA and the individual homeowner.

Articles of incorporation are required of incorporated HOAs and establish the HOA as a legal entity. They constitute the corporate charter and are filed with the Arizona Corporation Commission. The majority of HOAs formed since the mid-1980s are incorporated as nonprofit corporations and therefore have articles of incorporation. Incorporation as a nonprofit provides greater statutory protection to the HOA board members, as well as to the unit or property owners, than remaining unincorporated.

The bylaws set out the procedures for the internal governance and operation of the association. Rules and regulations often address specific matters related to the use of the property that are not specifically covered by the CC&Rs. If the rules conflict with the CC&Rs, they are generally unenforceable.⁶

Federal Regulation

Federal law defines an HOA primarily for tax collection purposes. The definition requires not only that the association be organized and operated for the acquisition, construction, management, maintenance and care of association property as under Arizona state law, but also that a certain percentage of gross income be derived from membership dues, fees or assessments and that a specific percentage of expenditures cover care and maintenance of the property.⁷

Various federal laws may affect the operation of HOAs. Examples include the federal Bankruptcy Act and the federal Communications Act.

State Regulation

Many aspects of HOAs are directly governed by Arizona statutes, such as the Planned Communities statutes, the Arizona Condominium Act and the Nonprofit Corporations Act.

The Planned Communities statutes were enacted in 1994 and constitute the first regulations pertaining specifically to the formation and operation of master planned community HOAs. Currently, these statutes address assessment increases, penalties, open meetings, disclosure of association records, resale disclosure, penalty and assessment liens, foreclosures, flag and political sign display, vehicle parking, solar energy restrictions, rental property requirements, architectural and design review committees and certain affairs of HOA boards of directors.

Condominiums are regulated by the Arizona Condominium Act, which is more extensive in

⁵ A.R.S. § 33-1202

⁶ A.R.S. §§ 33-1202; 33-1246; and 33-1802

⁷ 26 U.S.C. § 528

scope and detail than the Planned Community statutes. The Act prescribes requirements for, among other things, the creation, alteration, management and termination of condominiums, the imposition of monetary penalties, open meetings, resale disclosure, flag display, penalty and assessment liens and foreclosures. Several exceptions allow the establishment of differing regulations within the condominium documents.

The Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations, including any HOA that is incorporated as a nonprofit corporation.

Other sections of statute, such as those pertaining to fair housing, solar energy and HOA dwelling actions, also may limit the policies that an HOA may adopt and enforce.

ENFORCEMENT OF COMMUNITY RULES

An HOA may place a lien on a home or unit for regular assessments charged to the owner for HOA expenses and for late fees from the time the assessment becomes due, or for fees, charges, late charges, monetary penalties or interest after the entry of a judgment in a civil suit. Statute authorizes the foreclosure of an HOA's lien for regular assessments if the owner has been delinquent in the payment of the assessment for one year or in the amount of \$1,200, excluding late fees, whichever occurs first as determined on the date the action is filed.⁸

An HOA must provide a member with notice of violation of the governing documents before imposing monetary penalties. A member who receives a written notice may respond by certified mail within 21 business days and must receive a written explanation from the HOA within 10 business days that includes the following information, unless the information was provided with the original notice: 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; and 4) the process the member must follow to contest the notice.⁹ Unless the process was provided previously, the HOA may not proceed with any action to enforce the documents until the allotted time passes.¹⁰

LIMITATIONS ON HOA POWER

Statute limits HOA power in the following ways unless otherwise noted¹¹:

- An HOA cannot prohibit the outdoor display of the American flag, any flag of the U.S. uniformed services, the Arizona flag, an Arizona Indian nation flag, a POW/MIA flag, the Gadsden flag, a first responder flag, a Blue Star Service flag or a Gold Star Service flag. The HOA must adopt reasonable rules and regulations regarding the display of the listed flags, within identified constraints.
- An HOA may not prohibit door-to-door political activity or the circulation of political petitions on property normally open to visitors, except at certain times. The HOA may require the prominent display of identification of the person and the candidate or ballot issue.
- An HOA may not prohibit the display of a political sign, including association-specific political signs, within a given time-period before or after an election. It may regulate the size and number of signs placed on a property within specified parameters.
- An HOA may not prohibit or unreasonably restrict an owner's ability to peacefully assemble and use common areas of the HOA, if done in compliance with reasonable restrictions for the use of that property adopted by the HOA board.

⁹ A.R.S. § 33-1803

¹⁰ A.R.S. §§ 33-1242 and 33-1803

¹¹ A.R.S. §§ 33-1261 and 33-1808

⁸ A.R.S. § 33-1256, A.R.S. § 33-1807

- An HOA may not prohibit an owner or a group of owners from assembling to discuss matters related to an HOA, from inviting one political candidate or guest to speak to an assembly of owners about matters related to the respective planned community or from posting notices regarding assemblies on bulletin boards located on the common elements or within common element facilities.
- An HOA may not prohibit or charge a fee for the display of a commercially-produced, temporary open house, for sale, for sale by owner, for rent or for lease sign or a sign rider on a person's property. However, a sign or sign rider must conform to industry standards.
- An HOA may not limit open house hours except before 8:00 A.M. or after 6:00 P.M. An HOA may prohibit open house signs on the common elements of a condominium.
- Unless prohibited in the declaration, a unit owner or member may use their property as a rental property in accordance with rental time period restrictions.
- An HOA is limited in the information it may request regarding tenants who rent property in the planned community or condominium. The HOA may charge a maximum fee of \$25 on request for the outlined disclosures and a late fee of \$15; however, any attempt to exceed those limits voids that fee.¹²
- A planned community HOA, for which the declaration is recorded after December 31, 2014, may not regulate a roadway dedicated to or held by a governmental entity.¹³
- A planned community HOA may not restrict the installation or use of a solar energy device. The HOA may adopt reasonable rules regarding the placement of a solar energy device if those rules do not negatively impact

the function, cost or efficiency of the device.¹⁴

- A planned community HOA may not prohibit the temporary display of a cautionary sign pertaining to children playing or prevent resident children from engaging in recreational activities on a residential road with a posted speed limit of 25 miles per hour or less that is under the jurisdiction of the HOA. A cautionary sign must be professionally manufactured, no taller than three feet and removed within one hour of children ceasing to play.¹⁵
- A planned community HOA must allow a resident employed by a public service corporation or public safety agency to park on a street or driveway a vehicle necessary for emergency services or maintenance of electrical, water or telecommunications infrastructure.¹⁶

ADDITIONAL RESOURCES

- Planned Community Statutes: [A.R.S. Title 33, Chapter 16](#)
- Condominiums Statutes: [A.R.S. Title 33, Chapter 9](#)
- Nonprofit Corporations Statutes: [A.R.S. Title 10, Chapter 24 - Chapter 40](#)
- Common Areas Statutes: [A.R.S. Title 42, Chapter 13, Article 9](#)
- Arizona Department of Real Estate: [Homeowners Association Dispute Process](#)

¹² A.R.S. §§ 33-1260.01 and 33-1806.01

¹³ [A.R.S. § 33-1818](#)

¹⁴ [A.R.S. § 33-1816](#)

¹⁵ [A.R.S. § 33-1808](#)

¹⁶ [A.R.S. § 33-1809](#)