

# THE RIGHTS AND OBLIGATIONS OF HOMEOWNERS ASSOCIATIONS

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Homeowners Associations are abundant in the Phoenix area and, therefore, it is important to understand the authority Homeowners Associations have, as well as their obligations. If you purchase a property that is in a Homeowner's Association, membership in the Association is automatic. However, unless the Association is legally formed prior to an owner purchasing property in the Association, membership cannot be imposed absent the homeowner's express or implied consent. Shamrock v. Wagon Wheel Park Homeowners Association, 206 Ariz. 42, 75 P.3d 132 (2003).

The vast majority of Homeowner's Associations that exist were established by a builder or developer of a subdivision who, after a certain percentage of the homes have been sold, turns over the Association to the homeowners. At that time, the homeowners will appoint a Board of Directors to run the Association. The Board of Directors is responsible for ensuring the Association is properly maintained and all homeowners comply with specified guidelines, usually referred to as Covenants, Conditions and Restrictions ("CC&RS").

Normally, when homeowners think about Associations enforcing CC&Rs, they think about what restrictions are placed on them and what enforcement provisions are allowed. The key to remember is that the Association is supposed to uniformly enforce the violations of the CC&Rs and cannot arbitrarily enforce them. The Association's guidelines will provide what enforcement is allowed including, assessing fines and what procedures the Association must follow before assessing a fine.

In addition to enforcing rules when they are violated, such as leaving a trash can out, or painting a house the wrong color, the Association has an obligation to enforce the CC&Rs for the benefit of all homeowners. Johnson v. The Pointe Community Association, 205 Ariz. 485, 73 P.3d 616 (App. 2003); Gfeller v. Scottsdale Vista N. Townhomes Ass'n, 193 Ariz. 52, 969 P.2d 658 (App. 1998). This means that Associations have an obligation to enforce all of the Association's provisions. Further, Associations do not have unlimited authority to change their rules, but must have authority within their own documents to amend or add new laws. Wilson v. Playa de Serrano, 211 Ariz. 511, 123 P.3d 1148 (App. 2005). If an Association does seek to amend its rules, an approved amendment cannot be retroactive, and the amendment that is recorded by the Association must be exactly what was approved by the homeowners. Vales v. Kings Hill Condominium Association, 211 Ariz. 561, 125 P.3d 381 (App. 2005).

Associations, when enforcing the rules, also have an obligation to ensure that they are following Arizona and federal law. For example, Associations are required to provide a Resale Disclosure Statement to a potential buyer within ten days of receiving written notice of a pending sale. A.R.S. § 33-1260 and § 33-1806. In addition, the open meeting law states that a Board of Directors' meeting may only be closed for legal advice from an attorney for the Board or the Association; pending or contemplated litigation; personal, health and financial information about an individual member of the Association, an employee of the Association, or employee of the contractor for the Association; or matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or employee of the contractor of the Association. A.R.S. § 33-1248 and § 33-1804.

Board members can also be removed and the requirements for homeowners to have a special meeting called to remove a Board Member have recently been lessened. A.R.S. § 33-

1243 and § 33-1813. If those requirements are met, a special meeting must be called, noticed and held within thirty (30) days. More importantly, however, a petition that calls for the removal of a Board Member cannot be submitted more than once during each term of office for that Member.

The Arizona Legislature has also changed the law regarding voting by proxies. After termination of the period of declarant control, votes may not be cast pursuant to proxy, but instead an absentee ballot can be used. A.R.S. § 12-50 and § 33-1812.

A.R.S. § 33-1256 and § 33-1807 address Associations' liens. An Association has a lien for assessments, for charges for late payment of those assessments, as well as reasonable collection fees and attorneys' fees, and a lien for those assessments will have priority over all other liens, interests, and encumbrances, except liens and encumbrances recorded before the recordation of the Declaration; a first mortgage, deed of trust, or contract for sale; and liens for real estate taxes and other governmental assessments. A lien for assessments may be foreclosed in the same manner as a mortgage on real estate. However, if a homeowner violates the rules, a lien cannot be assessed for those violations until entry of a judgment in a civil suit. That lien cannot be foreclosed and is effective only on conveyance of any interest in the real property.

There are other statutes that restrict what Associations can enforce, including allowing homeowners to display the American Flag, and statutes for planned communities which allow homeowners to erect political signs prior to elections and allow residents to park a motor vehicle of 20,000 pounds or less in the community if the vehicle has an official emblem, or visible designation of that agency.

There are several other statutes that govern Homeowner Associations, and each year new laws are enacted by the Arizona Legislature. Homeowner Associations have an

obligation to ensure they comply with those statutes, as well as enforce the rules for the Association.

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