

Legislature Adjourns, Quick Summary of Bills

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The Arizona Legislature adjourned on April 20. Governor Brewer has signed six HOA-related bills and one is on her desk. All bills will become effective on July 20, 2011.

The bills that will impact associations are:

[HB2245](#) will permit owners to audio or video record annual membership meetings, special membership meetings, and board of directors meetings that are open to the membership. The board of directors can adopt REASONABLE rules and regulations regarding the recording, but cannot preclude the recording.

[HB2609](#) will (1) open committee meetings to the membership (similar to board meetings), (2) require boards to allow owners to speak once after the board has discussed a specific agenda item at an open board meeting, (3) permit the board to discuss an owner's appeal of a violation or fine in closed session, unless the owner requests that it be considered in an open meeting, (4) require that the agenda of a board meeting must be made available to the owners in attendance, (5) require that minutes of emergency board meetings (defined as a board meeting to discuss issues and take action that "cannot be delayed until the next regularly scheduled board meeting) must state the reason for the emergency and the minutes must be read and approved at the next regularly scheduled board meeting, (6) permit the board to meet by means of telephone conference IF a speakerphone is available in the meeting room to permit all owners to hear the discussions, and (7) clarify that any gathering of a quorum or more of board members is a "meeting" and must be open to the membership regardless of whether the board takes a vote.

[HB2717](#), sitting on the Governor's desk as of April 22, will (if Governor Brewer signs it), will prohibit associations from charging a fee for the use or placement of a for sale sign. HB2717 will also create a six-month loss of lien rights penalty against an association that violates an owner's right to have (1) a for sale sign, (2) a temporary open house sign, an open house during certain hours, or (3) an open house for leasing or a for lease sign.

[SB1148](#) will re-enact an alternative dispute process for disputes between condominium and planned communities and their members that was enacted in 2006. That process was declared unconstitutional in a case handled by Carpenter, Hazlewood, Delgado & Wood in an Arizona Court of Appeals ruling filed in October 2010. To read the case, click here: [Gelb v. Department of Building, Fire and Life Safety](#). This decision followed two Maricopa County Superior Court cases that also found the process unconstitutional and halted the processing of all claims. The essential problem with the previous

process, and the reason it was declared unconstitutional, is that disputes were allowed to be resolved in the executive branch without any corresponding regulatory authority. Setting aside the issue of constitutionality, SB1148 implements a system whereby disputes in condominiums or planned communities can be heard in the alternate process and the result is subject to judicial review (unlike the previous process).

SB1149 will create new restrictions on the amounts that can be charged when a lot or home in a condominium or planned community is sold (or ownership is transferred). SB1149 will (1) broaden the class of people who can receive a resale disclosure statement to include the “purchaser’s authorized agent”, (2) create an extinguishment of lien rights if the association does not provide certain information, (3) require a list of all lawsuits (other than assessment collection lawsuits) in which the association is a party and amounts of money claimed, (4) place a cap of \$400 for preparation of a resale disclosure statement and transfer work, (5) permit a “rush” fee of \$100 if the services are required within 72 hours, (6) permit a \$50 update fee if 30 days or more has passed since the original disclosure, (7) prohibit associations from charging \$400 if the fee on January 1, 2010 was less than \$400 except the fee can increase no more than 20% per year to the cap, (8) permits the imposition of a civil penalty of no more than \$1,200 for violating the new fee cap requirements, and (9) explicitly applies to an association’s managing agent as well.

SB1326 will include the “Gadsden Flag” (the “Don’t Tread on Me” flag) in the list of flags owners are permitted to display in condominiums and planned communities, and will explicitly allow owners in planned communities to fly flags in rear yards or front yards. Additionally, in planned communities, SB1326 will allow planned communities to limit the number of flags to no more than two flags at once and can limit the height of a flagpole to no higher than the “rooftop of the member’s home...”

SB1540 will make it a class 2 misdemeanor for any person to “knowingly remove, alter, deface, or cover any political sign of any candidate for public office or knowingly remove, alter or deface any political mailers, handouts, flyers or other printed materials of a candidate that are delivered by hand to a residence for the period commencing 45 days before a primary election and ending seven days after the general election.” SB1540 also prohibits condominiums and planned communities from restricting “door to door political activity, including solicitations of support or opposition regarding candidates or ballot issues” with the following caveats (1) the condominium or planned community must only allow door to door solicitation or circulation of political petitions “on property normally open to visitors within the association, (2) the condominium or planned community can restrict or prohibit door to door political activity from sunset to sunrise, (3) the association can require an identification tag for each person engaged in the political activity, (4) an association cannot require political signs to be commercially produced or professionally manufactured, (5) a condominium or planned community is not required to allow the door to door activity if the association “restricts vehicular or pedestrian access” to the condominium or planned community, and (6) nothing in SB1540 requires an association to makes its common areas or common elements (other than roadways and sidewalks that are normally open to visitors) available for political activity.

