**Arizona Homeowners Coalition**

**2018 Legislative Proposals**

**Proposal #1 Duties, and standards for directors, boards; conflict of interest**

1. This proposal defines the Fiduciary Duties of Common Interest Community Boards following the Restatement of law Third, Property (Servitudes) sections 6.13 and 6.14 as determined applicable to common interest communities’ in the State of Arizona by Arizona Appellate court decision in Tierra Ranchos Homeowners Ass’n v. Kitchukov No. 1 CA-CV 06-0474 (2007). These standards are vital to codify within statutes to clarify and describe the actual duties and standards for these community boards that will be enforced in any legal action decided by the courts in Arizona, and to eliminate the current broad based application of an inappropriate standard “Business Judgement Rule” established for non-profit corporations.
2. It will also clarify and make consistent the conflict of interest requirements that stem from the “Duty of Loyalty” well established by common and case law by requiring that a board member with an identified conflict of interest on an issue must not participate in the deliberation of that issue nor vote on the issue.

This proposal applies to both Planned Communities and Condominium.

**Proposal #2 Resale Disclosure Requirements and Fees**

1. This proposal requires that the association be the source of all documents and disclosures for the association to the potential buyer and requires that those disclosures be made available to the buyer prior to his contracting to purchase the home or unit.
2. It removes the language that presumes the association’s ability to cite a new buyer for violations of the community documents committed by prior home owners that were not previously cited by the association.
3. It clarifies some of the disclosure requirements to better inform the buyer of the financial and litigation health of the association.
4. It adds disclosure requirement relative to whether the association is still under declarant control and if any owners owns more than 10 % of the homes in the community. Both of these issue indicates that one individual or entity has superior voting power in the community and could control all community elections and decision.
5. It requires to disclose all fees that will be applied to either the buyer or seller and the basis for those fees.
6. It provides the option to allow a brief five year summary of planned capital expenditures if the reserve plan or study is greater than 20 pages long. Some of these plans are several hundred pages long filled with boiler plate, the full plan will be provided if specifically requested by the buyer.
7. It identifies in the buyer acknowledgement of foreclosure capability of the association for failure to pay assessments that the homestead exemption does not apply for those assessment liens.
8. It provides for civil penalties and removes redundant language on lien forfeiture already contained in the assessment liens statutes.
9. Finally it requires that the fees paid at closing must be paid directly to the association and recorded in their financial records for transparency and accountability reasons.

This proposal applies to both Planned Communities and Condominiums.

**Proposal #3 Open meeting, Voting**

1. This proposal provides for a definition of “Meeting” and “Committee” as used in the respective chapters. The meeting definition is consistent with that used for public bodies and deemed relevant to common interest communities by Arizona Attorney General Opinion R97-018.
2. It establishes minimal standards for the required annual meeting of members. It also requires the advance availability of agenda information along with the background information like draft minutes be provided to homeowners. This provision satisfies the following statement from the Public Policy statement contained in the existing statutes.

“ **that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken.”**

1. This Proposal also provides consistent standards for requesting a special meeting of the members and to request a vote to remove a member of the board.
2. This proposal recognizes that from the public policy statement, members must be allowed an opportunity to speak prior to any action to be taken by members therefore all actions to be taken or initiated by members must be conducted at a physical meeting of the members.
3. It allows for the beneficial use of “Written Consent” described in ARS 10-3704 with specific limitations to be consistent with the public policy statement.
4. Finally the proposal provides for civil penalties for violations of these section.

This proposal applies both to Planned Communities and Condominiums.

**Proposal #4 Assessments, Fines and Penalties and Liens**

1. This proposal first defines what constitute assessments in common interest communities.
2. This proposal will also limit the maximum assessment an association may charge to 20% over a two year period without prior approval of a majority of the members.
3. It requires that partial payment and the creation of a payment plan may be requested at any time from a homeowner for past due assessments. While a payment plan is in effect no collection activity or cost may be added to the account other than interest and late fees. Noncompliance with the payment plan will immediately initiate collection activities.
4. It seeks to clarify true due process for how fines for potential violations of governing documents may be assessed and disputed, consistent with the recent Arizona Appellate Court ruling on Turtle rock III v. Fischer.
5. Final disposition of the lien for assessments will comply with existing law that mandates that judgements for money or property must precede any attempt to foreclose on the home or unit for an assessment lien.
6. Finally his proposal seeks to clarify the difference between assessment liens and non-assessment liens, and correct technical errors in the current statutes.

This proposal applies in part to both Planned Communities and Condominiums.

**Proposal #5 Improvement Districts**

This proposal is the reintroduction of a Bill from the 2017 (SB1402) session that was held in committee. The bill introduced in 2017 was a consensus bill agreed to by all stakeholders in the process. Including AACM, CAI, the Builders Association of Arizona, and the League of Cities and Towns. It provides all developers the ability to propose the development or either a planned community or an Improvement District. The Improvement District is where the common property is owned by the municipality and the cost to maintain and improve that common land, or facilities is paid by the homeowners via a local tax. No association would be formed and any deed restrictions would be self-enforced by the members themselves. This proposal will prevent municipality zoning codes from denying the developers the choice to satisfy the potential demands of their customers.

**This is a free enterprise bill.**