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**COMMUNITY ASSOCIATION'S
GUIDE TO
THE 2008 CHANGES IN THE LAWS
AFFECTING COMMUNITY
ASSOCIATIONS**

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This document is intended to provide general information. It does not and cannot provide specific legal advice. For additional information or answers to questions, you may contact our office at 480-456-1500.

I. INTRODUCTION

This Community Association's Guide to the 2008 Changes in the Laws Affecting Community Associations (hereafter, the "Guide") is meant to provide a summary of the recent revisions to the Arizona Planned Community Act and the Arizona Condominium Act. The Guide also contains tips to understand and abide by the new changes.

This Guide is available to download from our website at www.shawlines.com

II. CHANGES IN THE LAW CONCERNING POLITICAL PETITIONS – HOUSE BILL 2440 - REVISED A.R.S. §33-1261 AND REVISED A.R.S. §33-1808. *THIS LAW WILL BE EFFECTIVE ON SEPTEMBER 18, 2008*

Quick Summary: This new law change applies to both Condominiums and Planned Communities and restricts an association's ability to prohibit the circulation of political petitions within an association.

House Bill 2440 will add new provisions to the Condominium Act and the Planned Communities Act. The new statutory change trumps and negates any provisions in a community association's CC&Rs or other governing documents that prohibit the circulation of political petitions, including nomination petitions and petitions relating to initiatives, referendum or recall elections.

The new language does permit an association to "reasonably regulate" such petitions through the development of rules and regulations. For example, an association may be able to develop a rule that states the petitions may not be obtained during nighttime hours or may develop a rule providing a timeframe for petition gathering.

House Bill 2440 does not apply, however, to either condominium associations or planned communities if the respective association "restricts vehicular *or* pedestrian traffic." In essence, gated communities are exempt from these provisions. Also, an argument may be made that community associations that are not gated but have private streets and sidewalks may also be exempt from the statute.

Finally, nothing in the Bill requires an association to make its common areas/elements available for the circulation of petitions to individuals who are *not* owners or residents of the community/condominium. Stated otherwise, an association is not required to allow a political petitioner access to common areas/elements to solicit support for a petition from the general public—i.e. a signature drive directed towards the general public that would be located on a community association's common areas or common elements.

ASSOCIATION "BEST PRACTICE" CONCERNING HOUSE BILL 2440

Community associations that do not restrict vehicle or pedestrian access may want to review their current CC&Rs and Rules and Regulations for any provisions that prohibit the circulation of political petitions and revise accordingly. Associations to whom the act applies

may want to consider enacting reasonable regulations on circulating petitions, such as time and location restrictions.

III. CHANGES IN THE LAW REGARDING THE APPLICABILITY OF THE CONDOMINIUM ACT – HOUSE BILL 2726 –A.R.S. § 33-1201.

Quick Summary: As of December 31, 2008, the Condominium Act, A.R.S. § 33-1201, et seq, will apply to all condominium associations in Arizona, irrespective of the date of the condominium was established.

House Bill 2726 amends the Condominium Act such that the Act will apply to all condominiums in Arizona, regardless of the date the condominium was created.

Previously, the Condominium Act applied in full only to condominium created during or after 1986. For any “pre-1986” condominiums, the Condominium Act applied to the extent that there was no conflict between the condominium’s governing document and various provisions of the Act. Thus, for example, if a pre-1986 condominium allowed for the use of voting by proxy, such provisions controlled, notwithstanding the restrictions on proxy voting found in the Condominium Act.

ASSOCIATION “BEST PRACTICE” CONCERNING HOUSE BILL 2726

Pre-1986 condominiums should review their governing documents, making note of any provisions that are now trumped by the Condominium Act. Older associations should also familiarize itself with the provisions of the Condominium Act to determine what, if any, new procedures are now required. The most noticeable changes include the elimination of voting by proxy and the requirement that absentee ballots be used for any action requiring member approval.

Once an association has reviewed their documents to determine the impact, we recommend circulating a letter to the membership that summarizes any changes in the administration of the association now required by House Bill 2726.

V. APPENDIX

1. HOUSE BILL 2440

2. HOUSE BILL 2726

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2440

AN ACT

AMENDING SECTIONS 33-1261 AND 33-1808, ARIZONA REVISED STATUTES; RELATING TO
CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1261, Arizona Revised Statutes, is amended to
3 read:

4 33-1261. Flag display; for sale signs; political petitions;
5 applicability

6 A. Notwithstanding any provision in the condominium documents, an
7 association shall not prohibit the outdoor display of any of the following:

8 1. The American flag or an official or replica of a flag of the United
9 States army, navy, air force, marine corps or coast guard by a unit owner on
10 that unit owner's property if the American flag or military flag is displayed
11 in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810;
12 4 United States Code sections 4 through 10).

13 2. The POW/MIA flag.

14 3. The Arizona state flag.

15 4. An Arizona Indian nations flag.

16 B. The association shall adopt reasonable rules and regulations
17 regarding the placement and manner of display of the American flag, the
18 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian
19 nations flag. The association rules may regulate the location and size of
20 flagpoles but shall not prohibit the installation of a flagpole.

21 C. Notwithstanding any provision in the condominium documents, an
22 association shall not prohibit the indoor or outdoor display of a for sale
23 sign and a sign rider by a unit owner on that owner's property, including a
24 sign that indicates the unit owner is offering the property for sale by
25 owner. The size of a sign offering a property for sale shall be in
26 conformance with the industry standard size sign, which shall not exceed
27 eighteen by twenty-four inches, and the industry standard size sign rider,
28 which shall not exceed six by twenty-four inches.

29 D. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN
30 ASSOCIATION SHALL NOT PROHIBIT BUT MAY REASONABLY REGULATE THE CIRCULATION OF
31 POLITICAL PETITIONS, INCLUDING CANDIDATE NOMINATION PETITIONS OR PETITIONS IN
32 SUPPORT OF OR OPPOSITION TO AN INITIATIVE, REFERENDUM OR RECALL OR OTHER
33 POLITICAL ISSUE ON PROPERTY DEDICATED TO THE PUBLIC WITHIN THE ASSOCIATION.
34 A CONDOMINIUM IS NOT REQUIRED TO COMPLY WITH THIS SECTION IF THE CONDOMINIUM
35 RESTRICTS VEHICULAR OR PEDESTRIAN ACCESS TO THE CONDOMINIUM. NOTHING IN THIS
36 SECTION REQUIRES A CONDOMINIUM TO MAKE ITS COMMON ELEMENTS AVAILABLE FOR THE
37 CIRCULATION OF POLITICAL PETITIONS TO ANYONE WHO IS NOT AN OWNER OR RESIDENT
38 OF THE COMMUNITY.

39 ~~D.~~ E. This section does not apply to timeshare plans or associations
40 that are subject to chapter 20 of this title.

41 Sec. 2. Section 33-1808, Arizona Revised Statutes, is amended to read:

42 33-1808. Flag display; political signs; caution signs; for sale
43 signs; political petitions

44 A. Notwithstanding any provision in the community documents, an
45 association shall not prohibit the outdoor display of any of the following:

1 1. The American flag or an official or replica of a flag of the United
2 States army, navy, air force, marine corps or coast guard by an association
3 member on that member's property if the American flag or military flag is
4 displayed in a manner consistent with the federal flag code (P.L. 94-344; 90
5 Stat. 810; 4 United States Code sections 4 through 10).

6 2. The POW/MIA flag.

7 3. The Arizona state flag.

8 4. An Arizona Indian nations flag.

9 B. The association shall adopt reasonable rules and regulations
10 regarding the placement and manner of display of the American flag, the
11 military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian
12 nations flag. The association rules may regulate the location and size of
13 flagpoles but shall not prohibit the installation of a flagpole.

14 C. Notwithstanding any provision in the community documents, an
15 association shall not prohibit the indoor or outdoor display of a political
16 sign by an association member on that member's property, except that an
17 association may prohibit the display of political signs earlier than
18 forty-five days before the day of an election and later than seven days after
19 an election day. An association may regulate the size and number of
20 political signs that may be placed on a member's property if the
21 association's regulation is no more restrictive than any applicable city,
22 town or county ordinance that regulates the size and number of political
23 signs on residential property. If the city, town or county in which the
24 property is located does not regulate the size and number of political signs
25 on residential property, the association shall permit at least one political
26 sign with the maximum dimensions of twenty-four inches by twenty-four inches
27 on a member's property. For the purposes of this **paragraph SUBSECTION**,
28 "political sign" means a sign that attempts to influence the outcome of an
29 election, including supporting or opposing the recall of a public officer or
30 supporting or opposing the circulation of a petition for a ballot measure,
31 question or proposition or the recall of a public officer.

32 D. Notwithstanding any provision in the community documents, an
33 association shall not prohibit the use of cautionary signs regarding children
34 if the signs are used and displayed as follows:

35 1. The signs are displayed in residential areas only.

36 2. The signs are removed within one hour of children ceasing to play.

37 3. The signs are displayed only when children are actually present
38 within fifty feet of the sign.

39 4. The temporary signs are no taller than three feet in height.

40 5. The signs are professionally manufactured or produced.

41 E. Notwithstanding any provision in the community documents, an
42 association shall not prohibit children who reside in the planned community
43 from engaging in recreational activity on residential roadways that are under
44 the jurisdiction of the association and on which the posted speed limit is
45 twenty-five miles per hour or less.

1 F. Notwithstanding any provision in the community documents, an
2 association shall not prohibit the indoor or outdoor display of a for sale
3 sign and a sign rider by an association member on that member's property,
4 including a sign that indicates the member is offering the property for sale
5 by owner. The size of a sign offering a property for sale shall be in
6 conformance with the industry standard size sign, which shall not exceed
7 eighteen by twenty-four inches, and the industry standard size sign rider,
8 which shall not exceed six by twenty-four inches.

9 G. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN
10 ASSOCIATION SHALL NOT PROHIBIT BUT MAY REASONABLY REGULATE THE CIRCULATION OF
11 POLITICAL PETITIONS, INCLUDING CANDIDATE NOMINATION PETITIONS OR PETITIONS IN
12 SUPPORT OF OR OPPOSITION TO AN INITIATIVE, REFERENDUM OR RECALL OR OTHER
13 POLITICAL ISSUE ON PROPERTY DEDICATED TO THE PUBLIC WITHIN THE ASSOCIATION.
14 A PLANNED COMMUNITY IS NOT REQUIRED TO COMPLY WITH THIS SECTION IF THE
15 PLANNED COMMUNITY RESTRICTS VEHICULAR OR PEDESTRIAN ACCESS TO THE PLANNED
16 COMMUNITY. NOTHING IN THIS SECTION REQUIRES A PLANNED COMMUNITY TO MAKE ITS
17 COMMON ELEMENTS AVAILABLE FOR THE CIRCULATION OF POLITICAL PETITIONS TO
18 ANYONE WHO IS NOT AN OWNER OR RESIDENT OF THE COMMUNITY.

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2726

AN ACT

AMENDING SECTION 33-1201, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1201, Arizona Revised Statutes, is amended to
3 read:

4 33-1201. Applicability

5 ~~A. This chapter applies to all condominiums created within this state~~
6 ~~on or after January 1, 1986~~ WITHOUT REGARD TO THE DATE THE CONDOMINIUM WAS
7 CREATED.

8 ~~B. This chapter applies to all condominiums created before January 1,~~
9 ~~1986 to the extent that this chapter does not conflict with the declarations,~~
10 ~~articles or bylaws of the condominium.~~

11 ~~C. With respect to condominiums created before January 1, 1986, this~~
12 ~~chapter applies to the extent the provisions of this chapter are not in~~
13 ~~conflict with former chapter 4.1 of this title, in effect before January 1,~~
14 ~~1986, or declarations, bylaws or plats of condominiums adopted pursuant to~~
15 ~~former chapter 4.1 of this title. The provisions of former chapter 4.1 of~~
16 ~~this title and the declarations, bylaws or plats adopted pursuant to that~~
17 ~~chapter control, except as provided in subsection D of this section.~~

18 ~~D. The provisions of former chapter 4.1 of this title, in effect~~
19 ~~before January 1, 1986, do not apply to condominiums created on or after~~
20 ~~January 1, 1986. The repeal of chapter 4.1 of this title does not invalidate~~
21 ~~condominiums created pursuant to chapter 4.1 of this title or future~~
22 ~~amendments to declarations, bylaws and plats of these condominiums if the~~
23 ~~amendments are permitted by this chapter. Amendments shall be adopted in~~
24 ~~conformity with the procedures and requirements specified in the~~
25 ~~declarations, bylaws and plats which were adopted pursuant to former chapter~~
26 ~~4.1 of this title. If amendments grant to a person any rights, powers or~~
27 ~~privileges permitted by this chapter, all correlative obligations,~~
28 ~~liabilities and restrictions in this chapter also apply to that person.~~

29 ~~E. Any unit owners' association created before January 1, 1986 may~~
30 ~~elect to be subject to the provisions of this chapter by amending its~~
31 ~~condominium documents to conform with the requirements of this chapter. The~~
32 ~~amendment must be adopted in conformity with the condominium documents and~~
33 ~~must be permitted by this chapter. If an amendment grants to a person a~~
34 ~~right, power or privilege permitted by this chapter, all correlative~~
35 ~~obligations, liabilities and restrictions in this chapter also apply.~~

36 Sec. 2. Effective date

37 Section 33-1201, Arizona Revised Statutes, as amended by this act, is
38 effective from and after December 31, 2008.