



## United Homeowner Associations Library

By Stephanie Monroe Wilson

In Arizona, Homeowner Associations are governed primarily by two sets of statutes, the condominium statutes, A.R.S. § 33-1201, et. seq., and the planned community statutes, § 33-1801, et. seq. The vast majority of communities in Arizona are in Homeowner Associations. Therefore, it is important that homeowners, property managers and builders are aware of the laws that govern Homeowner Associations. This article provides a basic understanding of Homeowner Associations and a practical guide for those who live in or are considering living in a Homeowner Association, as well as property managers who are assisting and working with Homeowner Associations, and builders who are developing subdivisions which are Homeowner Associations.

### **I. ORIGIN OF A HOMEOWNER ASSOCIATION**

The vast majority of Homeowner Associations that exist were established by a Builder or a Developer of a subdivision. Once the Builder/Developer sells a certain percentage of the homes in the area, the Builder/Developer turns over the Association to the homeowners. At that time, the homeowners will become the owners of the Association and appoint a Board of Directors to run the Association.

### **II. THE BOARD OF DIRECTORS**

The Board of Directors often hires a property management company to assist in operating the Association, but a property manager is not required. The Board of Directors and the property manager are responsible for ensuring the community is properly maintained and all homeowners comply with specified guidelines. Those guidelines are known as Covenants, Conditions and Restrictions (“CC&RS”). The CC&Rs set forth the “laws” which govern the homeowners who live in that area. These laws control things from parking, improvements a homeowner can make, window coverings, pets, decorations a homeowner can display, to whether a homeowner can run a business out of their home. The Board of Directors has the responsibility and duty to ensure all homeowners comply equally with these laws.

It is important that the Board of Directors follow not only the community documents, but also Arizona law, as many Homeowner Associations have community documents that while in compliance with the law at the time they were enacted, are no longer in compliance. In addition, if there is a conflict between the community documents and Arizona or Federal law, Arizona and Federal law to control.

### **III. CC&Rs**

The purpose of Homeowner Associations and CC&Rs is to enhance the property values by maintaining the homes in a uniform manner. Many would balk at the idea of being fined for leaving their trash can out or for putting up a basketball hoop, but homeowners have been fined for this and many other violations. The key to remember is that the Board of Directors is supposed to uniformly enforce the violations of the CC&Rs. This means the Board of Directions must treat each homeowner the same and equally apply the CC&Rs they have been elected to uphold. The CC&Rs, as well as the Bylaws for the Association, provide what enforcement is allowed, including assessing fines and what procedures the Board of Directors must follow before assessing a fine.

The Board of Directors has the ability to file a lien against your property if you fail to pay your assessments, and then can foreclose on your property. However, the Legislature has limited the Board of Directors' authority in this regard, and the Board of Directors cannot foreclose until the amount owed is \$1,200.00 or the homeowner is in arrears for one year.

The Board of Directors cannot, however, file a lien against your property if you violate the CC&Rs. If you violate the CC&Rs, the Board of Directors is required to file a civil suit, obtain a judgment, and then a lien can be filed. However, this lien for a violation of the CC&Rs is only valid when the property is sold and cannot be used to foreclose on the property such as a lien for failing to pay your assessments.

In addition, a homeowner who receives notice that their property is in violation of the community documents, may respond to the Board of Directors by sending a response by certified mail within ten business days after the date of the notice. Within ten business days after receipt of that certified mail containing the response from the homeowner, the Board of Directors shall respond to the homeowner with a written explanation which provides the provision of the community documents that has allegedly been violated, the date of the violation or the date the violation was observed, the first and last name of the person or persons who observed the violation, and the process the homeowner must follow to contest the notice. The Legislature has also set forth a procedure whereby a homeowner may

petition for a hearing in front of an Administrative Law Judge with the Office of Administrative Hearings regarding a dispute with their Homeowners Association.

#### **IV. DISCLOSURE OF DOCUMENTS**

If you are a property owner in a subdivision with a Homeowners Association, the first thing you should do is read your community documents. The CC&Rs, along with the Bylaws and Rules and Regulations for the Association, should be provided to you when you purchase the home.

If you are purchasing an existing home, under Arizona law, the CC&Rs, Bylaws, Rules and Regulations, and financial information regarding the Homeowners Association is required to be provided to you by the Homeowners Association, if the Homeowners Association contains fifty or more homes, within ten days of the Homeowners Association receiving written notice of the pending sale. If the Homeowners Association contains less than fifty homes, the seller is responsible for providing this information. If you are purchasing a new home from a Developer/Builder, the Developer/Builder usually has these documents available for a homeowner to review even prior to making an offer on the property.

#### **V. LAST THOUGHTS**

The Homeowners Association, through its Board of Directors, has tremendous authority over what you do with your property and the ability to assess fines and place a lien on your property. As a homeowner, your first recourse is with the Board of Directors. If you are unsuccessful at that level, your recourse used to only be through a lawsuit, but now you may be able to proceed with the Office of Administrative Hearings.

Homeowners Associations do have a great deal of control and authority, but this control and authority has been designed for the benefit of the community. As a homeowner, you can avoid many of the problems, which occur in the Homeowners Association, by making yourself aware of the CC&Rs and Bylaws to ensure you comply with those provisions.