Subject: Legislative Update - Two HOA Bills Signed by the Governor

The Arizona Legislature has passed two bills that Governor Brewer has signed. Links to both bills appear throughout this e-mail wherever the bill number appears. New language in the statutes is in BLUE; language deleted is in red. Both will become effective 90 days after the Legislature adjourns. The Legislature is still in session so the "effective" date of these bills is not yet known.

HB2345 makes changes to A.R.S. Section 33-1261 (Condominium Act) and A.R.S. Section 33-1808 (planned community statutes) relating to **for sale signs, for lease signs, open houses and open house signs**. The law will now state that, no matter what the governing documents of a condominium or planned community state, a condominium or planned community association cannot prohibit the indoor or outdoor display of a for sale sign (including "for sale by owner") and a sign rider by an association member on that member's property. The size of a for sale sign must be in conformance with the "industry standard size" sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. In addition to those restrictions which are part of current law, HB2345 **imposes the following new restrictions** with respect to real estate for sale or lease in the condominium or planned community association:

1. An association cannot prohibit or otherwise regulate any of the following:
    a. Temporary open house signs or a unit owner's for sale sign on the owner's property.
    b. The association cannot require the use of particular signs indicating an open house or real property for sale.
    c. The association cannot regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.
    d. Open house hours. The association cannot limit the hours for an open house, except that the association can prohibit an open house being held before 8:00 am or after 6:00 pm. (The association CAN prohibit open house signs on common elements of a condominium and common areas of a planned community.)
    e. An owner or owner's agent's "for lease" sign unless an association's governing documents prohibit or restrict leasing of the unit or lot.
    f. A "for lease" sign or require the use of a particular "for lease" sign other than the "for lease" sign cannot be any larger than the industry standard size sign of 18 by 24 inches on or in the unit or lot.
    g. If leasing of a lot or unit is not prohibited or restricted, the association may prohibit open house leasing being held before 8:00 am or after 6:00 pm.

The biggest unanswered question in HB2345 involves gated communities. Does HB2345 require gated communities to provide open access to the community to people seeking to attend an "open house"? We do not believe that it does. HB2345 permits open houses and the signs that go with them. But nothing in HB2345 requires an

association to provide access to potential buyers when the access protocol in place would not permit their entry.

HB2768 imposes new rules on " **transfer fee covenants.**" Specifically, it addresses provisions in a "declaration, covenant or any other document relating to real property" that bind successors in title and obligate payment of a fee to a declarant or a third person on transfer. There are two broad issues with HB2768 as it relates to condominiums and planned communities in Arizona. First, will A.R.S. Section 33-442 (the new statute created by HB2768) impact "transfer fees" or "resale disclosure statement fees" charged by condominium and planned communities? Second, will A.R.S. Section 33-442 impact or regulate monies due the condominium or planned community association on sale or transfer of the property that are in addition to "transfer fees" or "resale disclosure statement" fees?

Since "transfer fees" are a statutory charge if the condominium or planned community association is incorporated as an Arizona Nonprofit Corporation in A.R.S. Section 10-3302(16), it does not appear that HB2768 was intended to address those charges (the general thinking is that the "transfer fee" referenced in A.R.S. Section 10-3302(16) permits a transfer fee charge that does not exceed the cost of facilitating the transfer of the membership or ownership of the lot in the association's records). Also, since the "resale disclosure statement" fee is expressly permitted in the statutes that require the resale disclosure fee (A.R.S. Section 33-1260 for condominiums and A.R.S. Section 33-1806 for planned communities), it does not appear that HB2768 was intended to address those charges.

With respect to monies charged at a closing or on an involuntary transfer (typically a lender foreclosure) that are not the "transfer fee" or "resale disclosure statement" fee referenced above, HB2768 does address those charges and provides a specific exception that will generally permit existing "due on sale" fees or charges (typically these are "due on sale" assessments, fees or charges that exceed the cost of facilitating the transfer of membership in the corporation and that do not go toward the cost of providing the resale disclosure statement and go by various names including "Working Capital", "Community Enhancement Fee", "Resale Assessment", Etc.). The good news is that there is now statutory recognition that these types of fees exist and can exist in governing documents. Additional good news is that by adding a definition of "transfer" as a "sale, gift, conveyance, assignment or other transfer", there should be fewer arguments about foreclosure buyers having to pay these fees if the documents are worded properly. By virtue of the exception, HB2768 will not prohibit the enforcement of "transfer fee covenants" in governing documents if the fee or charge is to be used "exclusively for the purpose authorized in the document" and both (1) the fee being charged "touches and concerns the land"; and (2) no portion of the fee or charge is required to be passed through to a third party or "declarant" unless the third party or declarant is authorized in the document to manage real property within the association or was part of an approved development plan. While we believe this statute is generally favorable to associations, application of this language to a particular condominium or planned community or other type of association involves an evaluation of the governing

documents to determine if the new statute, A.R.S. Section 33-442, could impact charges or fees due on sale.

Please note that there is another helpful exception in the bill – any fee or charge that is imposed by a document and that is payable to a nonprofit corporation for the “sole purpose of supporting recreational activities within the association”. This may cover some associations not otherwise covered by the first exception. Finally, there is also an exception for fees, charges, assessments, dues or other amounts related to the purchase or transfer of a “club membership” related to the real property.

Throughout the legislative session, I have provided updates at my “legislative blog” at http://blog.carpenterhazlewood.com/scott Feel free to add it to your “favorites” and check back frequently for the latest updates. Also, you can subscribe to the blog by adding your e-mail address under the tab titled “Subscribe to E-mail Updates.” If you do that, you will receive an e-mail whenever the blog is updated with new entries or information. I will also be posting “Friday Updates” on the blog that summarize what is going on with all pending bills until the legislative session officially adjourns.