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**2010 ARIZONA LEGISLATIVE UPDATE**  
**(effective: July 29, 2010)**

**Bills that have been signed into law by Governor Brewer that affect HOAs:**

**HB 2334 (House Engrossed Version):** Award of Document Preparer Costs in Litigation [Amends A.R.S. §12-332]: A court may award to a prevailing party in a court action, the cost of document preparation if the document was prepared by a person, who has been certified by the Arizona Supreme Court as a document preparer. The party seeking recovery must file a sworn affidavit of costs.

Background: Rule 31, Rules of the Supreme Court, provides for the regulation and discipline of persons engaged in the practice of law. Rule 31 also provides exceptions where non-lawyers may perform specified legal services. In 2003, the Arizona Supreme Court made legal document preparers (LDPs) subject to regulation by the Court. A “legal document preparer” is a non-lawyer who prepares or provides legal documents without the supervision of an attorney for an entity or a member of the public who is engaging in self-representation in any legal matter. Thus, a non-lawyer who prepares a Notice of Lien for an Association needs to be a legal document preparer, certified by the Arizona Supreme Court. [For information on becoming a legal document preparer, you may call the Court at (602) 452-3378 (Certification and Licensing Division Line); or look at Rule 31 and Arizona Codes of Judicial Administration § 7-208 and § 7-201 on the Court’s website: [www.azcourts.gov/azsupremecourt.aspx](http://www.azcourts.gov/azsupremecourt.aspx).]

**HB 2345 (Senate Engrossed Version):** Real Estate Signs [Amends A.R.S. §33-1261 in the Condominium Act and A.R.S. §33-1808 in the Planned Communities Act only]. This law adds the following new restrictions that further limit condominium and planned community associations’ power to prohibit real estate signs. Specifically, the following signs cannot be prohibited or otherwise regulated:

- (a) Temporary open house signs or a unit owner’s “for sale” sign on his/her property.
- (b) Temporary “open house” or “for sale” signs that are industry standard size and that are owned or used by the seller or his/her agent.
- (c) “For Lease” signs (unless the governing documents prohibit or restrict leasing.)

- (d) An Association cannot require the use of a particular type or style of “For Lease” or “For Sale” sign, but may require the use of industry standard size signs (For Sale signs: 18" x 24" with a one rider that is 6" x 24"; For Lease signs: 18" x 24").

In addition, an Association cannot limit the hours for an open house, but can prohibit an open house from being held before 8:00 a.m. or after 6:00 p.m. and may prohibit “open house” signs on a condominium’s common elements or a planned community’s common areas.

Background: Current statutes state that planned communities and condominium associations cannot prohibit the indoor or outdoor display of a “For Sale” sign and a sign rider by a lot or unit owner on that owner’s property. These statutes provide that the “For Sale” signs must conform to industry standard sign size, not to exceed 18” x 24” and industry standard sign rider size, not to exceed 6” x 24”. This new law also prohibits an HOA from regulating or disallowing temporary open house signs, “for sale by owner” signs and “for lease” signs that conform to the industry standard size.

**HB2768 (House Engrossed Version):** Transfer Fee Covenants [Adds A.R.S. §33-442 to the interpretation rules in the laws pertaining to Arizona real property conveyances and deeds].

The stated intent of this law is to impose new rules on transfer fee covenants that are charged when ownership of real estate is transferred, but which do not “touch and concern the land” being transferred. This law states that: “A provision in a declaration, covenant, or any other document relating to real property in this State is not binding or enforceable against the real property or against any subsequent owner, purchaser, lienholder or other claimant on the property if it purports to do both of the following: (1) bind successors in title to the specified real property; (2) obligate the transferee or transferor of all or part of the property to pay a fee or other charge to a declarant or a third person on transfer of an interest in the property or in consideration for permitting such a transfer.”

It does not appear that this law is intended to limit the right of an Association to charge a fee for providing disclosure information to a prospective owner [required by A.R.S. 33-1806 for planned communities and A.R.S. 33-1260 for condominiums]; nor does it appear that this law limits the statutory right of an Association to charge a fee for facilitating the transfer of an Association member’s non-profit corporate membership, as permitted by the Arizona Non-Profit Corporation Act [10-3302(16)]. In addition, there is an exemption in this law that will generally permit existing resale assessments or working capital fees that are provided for in a community’s declaration of covenants, conditions and restrictions (“CC&Rs”).

There are two other helpful exceptions written in this law that will allow: (1) “any fee, charge, assessment, dues, contribution or other amount relating to the purchase or transfer of a club membership related to the real property owner”; and (2) “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.”