



From the President:

To our clients:

A large number of bills affecting homeowner associations are making their way through the Arizona Legislature this session. Normally, only one or two are filed per year. This year over forty bills have been presented. This does not mean we will have forty new laws. Realistically, very few will pass. Following are a few we believe require the closest scrutiny:

H2405: HOMEOWNERS' ASSOCIATIONS - Several new sections are added to T33 on homeowners' associations with 50 or more units with provisions related to records access, fiduciary duties of boards; more. First sponsor: Rep. Camarot.

H2604: HOMEOWNERS' ASSOCIATIONS - A number of changes related to homeowners' associations including inspection of records, open meetings, prohibition from removing a board member without proper notice to all association members; changing the definition of quorum; changes to association governing documents; associations may not prohibit display of the American flag; more. First sponsor: Rep. Voss.

H2620: COURTS; PURCHASER DWELLING ACTIONS - A new article is added in statutes governing courts relating to purchaser dwelling actions, which are defined as court actions brought against a seller arising out of design, construction, condition or sale of dwellings. The seller must be given the opportunity to repair the defect, at least 120 days before filing a dwelling action; more. First sponsor: Rep. Nelson.

S1034: SCHOOLS; HOMEOWNER ASSOCIATION SCOPE - Statutes on planned communities do not apply to any schools, including charter schools, and schools are exempt from regulation by any homeowners' association. First sponsor: Sen. Gerard.

S1055: HOMEOWNERS' ASSOCIATIONS; FLAGS - Regardless of any provision in any community documents, an association shall not prohibit the outdoor display of the American flag by a unit owner on that owner's property, in a manner consistent with the federal flag code. Associations are authorized to regulate location and size of flagpoles, but must not prohibit installation of a flagpole. AS PASSED SENATE. First sponsor: Sen. Bundgaard.

S1262: RESIDENTIAL PROPERTY COVENANTS - Codes, covenants and restrictions in a platted residential subdivision expire 30 years after the subdivision was recorded unless a majority of the property owners execute a written agreement to continue the CC&Rs. Applies only in a city or town with a zoning ordinance and only if a planned community or condominium-unit owners' association is not required to be formed. Planned communities and condominiums are exempt in general. First sponsor: Sen. Gerard.

S1300: HOMEOWNERS' ASSOCIATIONS - A number of changes are made to statutes governing corporations and property relating to homeowners' associations, including: open records, open meetings, allowing homeowners the right to initiate court action to challenge penalties assessed by association boards; voting by proxy; limits on raising assessments; more. First sponsor: Sen. Jarrett.

S1342: HOMEOWNERS' ASSOCIATIONS - Various changes are made to statutes governing homeowners' associations, including: to exempt them from provision for nonprofit corporations that members may not sue the association unless they have at least 10 percent of the voting power to join the action; open meetings and records inspection provisions are changed; much more. First sponsor: Sen. Gerard.

S1376: HOMEOWNERS' ASSOCIATIONS - By a majority vote, owners in a homeowners' association may vote to dissolve the association if the construction of the planned community was complete at least ten years prior to the vote, and the community is in an incorporated area of a city or town that provides for zoning on the association's real property. Sponsor: Sen. Jarrett.

With our vast experience in community management, HOAMCO is often asked to advise on pertinent legislative issues. In fact, I am on the Legislative Action Committee, which wrote one of these bills and is lobbying on most of the others. This active monitoring of local and national laws affecting homeowner associations is part of HOAMCO's commitment to providing our clients with full-service management.

Respectfully yours,

Justin Scott, CMCA, AMS®
President

— *NEW LEGISLATION* —
“*BENEFICIARY DEEDS*”

Jane Doe recently passed away. At the time of her death, she owned various bank accounts and some personal property valued at less than \$50,000.00. She also owned her personal residence free and clear of any mortgages or liens. At the time of her death, her home was valued at \$75,000.00. Jane left a will which distributed her estate in equal shares to her three children. Even though her personal property assets were less than \$50,000.00, Jane's real estate was valued at over \$50,000.00 and her children were not able to distribute her estate through an expedited probate process. Given the value of her residence, Jane's children had to probate Jane's estate which cost significant attorneys' fees and court costs. Jane's estate did not owe any estate taxes.

Jane's friend, Richard Roe, did not want to repeat Jane's mistake and have his estate pass through probate. Richard had an estate of similar size to Jane's. Richard had under \$50,000.00 in personal property assets, and his residence in the same community had equity of approximately \$60,000.00. Richard went to the local office supply store and obtained a Quit Claim Deed which he completed and recorded. The deed conveyed his residence over to himself and his two children as joint tenants with right of survivorship. Several weeks after recording the deed, Richard's son, who is a college student with limited assets, caused a motor vehicle accident. His son did not have any auto insurance. A victim of the accident made a claim against the son's interest in Richard's residence and now the property is involved indirectly in litigation.

The effect of the beneficiary deed is that upon the death of the owner, the real property automatically vests in the named grantees without the necessity of passing the real property through probate.

The Arizona Legislature recently passed a law making it easier for individuals to transfer real property to others at the time of death and avoid the pitfalls of probate and problems which arise by owning real property in joint tenancy with others. This new instrument of conveyance is entitled a “beneficiary deed,” and the provisions permitting its use were approved by the Legislature in the spring of 2001. The beneficiary deed acts in a similar manner to a POD (paid on death) bank account. An owner of real property may record a beneficiary deed designating that on the death of the owner, the property will be automatically transferred to various grantees named in the deed. Among themselves, the grantees may be joint tenants with right of survivorship, tenants in common, holders in community property with right of survivorship or any other tenancy that is otherwise valid under Arizona law. The effect of the beneficiary deed is that upon the death of the owner, the real property automatically vests in the named grantees without the necessity of passing the real property through probate. If changes need to be made, the beneficiary deed may also be revoked at any time by the grantor. This new law could represent a significant savings for individuals who would otherwise have to probate property in order to get the property from the decedent's estate into the beneficiary's estate.

Current Arizona probate law provides that, under certain conditions, real property may be transferred to heirs outside of the probate process if the equity value of the real property (property tax value of the property

less liens) is \$50,000.00 or less. Otherwise, the real property must pass through a probate procedure which can be time consuming and somewhat costly for the heirs. The new beneficiary deed law provides that real property of any value can be passed on to heirs upon the death of the owners without the necessity of involving the probate court.

The new beneficiary deed law also helps individuals avoid problems that might arise if owners decide to hold their property in joint tenancy with right of survivorship with the potential heirs. Many times, in order to avoid the probate process, parents will hold their real property in joint tenancy with some or all of their children. This manner of holding title to property effectively avoids the probate process but also entails additional risks and problems. Some of these risks include subjecting the real property to the liabilities and judgments of the children. By recording a beneficiary deed, title does not vest in the child until the parent is deceased. As a result, the real property is not subject to liabilities and judgments against the child during the life of the parent.

In the future, managers of homeowners' associations will come into contact with beneficiary deeds recorded by residents in favor of their children. Managers may also be acquainted with residents who are concerned about the costs and effects of probate or jointly owning property and may benefit from the use of a beneficiary deed.

– David L. Weed

This newsletter is provided for informational purposes only and is not intended to take the place of individual legal advice. Please consult a knowledgeable attorney regarding your specific legal needs.

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EXAMPLE HOME OCCUPATION REQUIREMENTS

As some of our clients are interested in starting home businesses, we thought you might like to know what to expect when applying for a home occupation permit in your community. Following are typical requirements for receiving a home occupation business license or permit:

- Only businesses that (a) are conducted inside a building, (b) employ only residents of the home, (c) are clearly secondary to the use of the home as a residence, and (d) do not change the character of the home will be conducted at the stated address.
- Nothing shall be done to alter the residential appearance of the building site.
- No non-residential activity shall be discernible from beyond the premises.
- No use of mechanical equipment is allowed other than that customarily used for domestic, hobby or household purposes.
- No business callers, customers or visitors shall be involved, nor shall there be deliveries or outside services beyond those normal to residential uses.
- No abnormal non-residential traffic is allowed, nor shall an unusual load be placed on utilities.
- Home businesses shall not include barber shops, beauty parlors, commercial stables, veterinary offices, hospitals, kennels, real estate offices, insurance offices, day care centers, or motor vehicle repairing.
- Home businesses must (a) obtain a Prescott Valley Business License, and (b) complete and sign a Permit Form.

You may contact the Planning and Zoning Department of your community for a Home Occupation Permit Form or for a more concise explanation of the requirements mandated for obtaining this type of permit.

Visit our website at www.hoamco.com and pay close attention to the **Community Demo Site**. Please ask your Community Association Manager for details.

Citizen Education Workshops

The City of Prescott's Neighborhood Services Division is sponsoring the City's first Citizen Education Workshop open to any Prescott resident. The workshop is a half-day session that will be held on Friday, April 5. There is no charge to attend.

The workshop will feature four topics, which will be repeated so attendees will have the opportunity to attend two different topics. The workshop is scheduled from 8:30 a.m. to noon at the Hassayampa Inn. A continental breakfast will be served.

The topics include:

- **"General Government – What Does a City Manager Form of Government Mean?"** – will introduce you to how your local government works, who to call when you have a question or concern and how you can contact your elected officials.
- **"Code Enforcement – What Can and Cannot be Enforced?"** – will focus on the City's Property Maintenance Ordinance, and what can be done in terms of illegally parked cars, junk vehicles, unsightly premises, peeling paint, deteriorating homes, weeds, etc.
- **"Neighborhoods – Keeping up with the Zoning"** – a special class on land use changes covering aspects of zoning changes, conditional use permits, how the process works, and "decoding" planning jargon.
- **"How Safe is Safe – Neighborhood Watch and other Home Safety Techniques"** – a crime prevention officer from the Police Department will describe how to get a neighborhood watch started in your neighborhood, how to keep the program alive, and other home and personal safety lessons.

To request a registration form or learn more about the program, please call the Neighborhood Services Office at 928-777-1363. Space is limited so don't delay in calling.

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