

ALERT: "Administrative Law Judge" Process Unconstitutional

On January 29, 2009, Maricopa Superior Court Judge Paul J. McMurdie entered an injunction prohibiting the Arizona Department of Fire, Building and Life Safety and the Office of Administrative Hearings from taking any action on pending matters regarding condominiums and planned communities in Arizona, or accepting any new petitions for the administrative adjudication of disputes between condominiums and planned communities and the homeowners in those associations. Judge McMurdie's order is attached.

The finding of unconstitutionality and related injunctions puts an end to a process enacted in 2006 by the Arizona Legislature to provide an alternative forum for the resolution of disputes between homeowners and their homeowners associations. In the specific case in which Judge McMurdie entered the injunctions, two homeowners asserted claims against Phoenix Townhouse Homeowners Association. Attorneys Jason E. Smith and Carrie H. Smith of our law firm filed a Special Action on behalf of Phoenix Townhouses to avoid the HOA hearing process and request that Judge McMurdie find the entire process unconstitutional. They argued that the Legislature and Governor cannot move disputes from the judicial branch to the executive branch without corresponding regulatory authority. Because the Arizona Department of Fire, Building and Life Safety did not and does not in any way regulate condominium or planned community associations, the movement of disputes to the executive branch is an unconstitutional encroachment on the judicial branch's role under the Arizona Constitution. The State of Arizona has 30 days from the entry of Judge McMurdie's order to appeal his decision to the Arizona Court of Appeals.

Any pending ALJ matters will be suspended and the DFBS will be prohibited from taking any new cases. If you are party to an existing matter, check with your attorney for next steps.

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8 **SUPERIOR COURT OF ARIZONA**
9 **MARICOPA COUNTY**

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11 **PHOENIX TOWNHOUSE**
HOMEOWNERS ASSOCIATION, an
12 **Arizona nonprofit corporation,**

13 **Plaintiff,**

14 **vs.**

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16 **ARIZONA OFFICE OF**
ADMINISTRATIVE HEARINGS;
17 **ARIZONA DEPARTMENT OF FIRE,**
BUILDING AND LIFE SAFETY; and
18 **HONORABLE BRIAN TULLY,**
19 **ADMINISTRATIVE LAW JUDGE;**

20 **Defendants,**

21 **and**

22
23 **RON MERITT AND JOHN**
HERNANDEZ,

24 **Real Parties in Interest.**
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Case No. LC2008-000740-001 DT

**ORDER FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**(Assigned to the Honorable
Paul J. McMurdie)**

26 The Court having reviewed the pleadings and briefs herein and having given the
27 State of Arizona the opportunity to respond to Plaintiff's claim of unconstitutionality,
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1 which the State refused to do, and no other party having appeared and defended, and
2 good cause appearing:

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4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 5 1. Laws 2006, Ch. 324, § 6, which amended A.R.S. § 41-2198.01 *et seq.* and
6 A.R.S. § 33-1242 and § 33-1803, violates the Arizona Constitution's
7 separation of powers clause and therefore is unconstitutional to the extent
8 that it created an administrative hearing process involving planned
9 community and condominium associations and their members;
10
11 2. The Arizona Department of Fire, Building & Life Safety and Office of
12 Administrative Hearings are enjoined from taking any further action in any
13 pending administrative adjudication and from accepting any new petitions
14 for administrative adjudications; and
15
16 3. ~~Plaintiff is the prevailing party and is entitled to an award of reasonable~~ p 8
17 ~~attorneys' fees and costs pursuant to A.R.S. § 12-348 and may submit an~~
18 ~~application and affidavit in support of the same.~~

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21 IT IS SO ORDERED.

22 DATED this 29th day of January, 2009.

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24 PAUL J. MC MURDIE
25 JUDGE OF THE SUPERIOR COURT

26 _____
27 Honorable Paul J. McMurdie
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