

Arizona Association of Community Managers 2017 Final Legislative Session Report



**Prepared by Veridus LLC
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General Session Overview

The 53rd Arizona Legislature adjourned Sine Die on Wednesday, May 10, 2017, at 7:00pm. This session, lawmakers introduced 1,079 bills and 101 memorials & resolutions. 353 bills received final passage – 342 of which have been signed into law. There were 11 vetoes. Gov. The effective date for all non-emergency measures is August 9th, 2017; bills containing an emergency clause take effect immediately upon signature.

Governor Doug Ducey kicked off the 2017 legislative session in January by singing the praises of "Babies at Work" (and, for once, he wasn't talking about the lobbyists).

This session marked the third for Gov. Ducey and the first for 23 freshman legislators. That includes Arizona's newest state lawmaker, Rep. Ben Toma (R-Peoria). Toma was appointed to fill the post formerly held by Rep. Phil Lovas, who recently resigned to take a federal job with the U.S. Small Business Administration.

The legislative session began with fresh leadership in both chambers. The Senate welcomed new President Steve Yarbrough (R-Chandler); meanwhile, the House elevated Rep. J.D. Mesnard (R-Chandler) to the role of Speaker.

New leadership or not, topics that dominated the session were reminiscent of 2016. Take education, for one. After last year's passage of Proposition 123, Governor Ducey in January laid out steps 4-18, including a pay raise for teachers, results-based funding for excelling schools, money for full-day kindergarten and more.

Of course, it was Step 19 that caused the most commotion this year: the expansion of Arizona's Empowerment Scholarship Account program – critics call them vouchers – to all Arizona K-12 students. The Governor's signing of the controversial bill brought him kudos from national school-choice advocates, but also loads of criticism and the threat of a referendum from ESA opponents. One thing is certain: the ESA legislation may go down as this year's Mother of All Bills (MOAB).

Funding for the Governor's capital construction plan for universities was only slightly less explosive. Legislators balked at the initial plan, which would have allowed Arizona's public universities to "recapture" the sales taxes they pay. Instead, the Legislature approved a straight appropriation of \$27 million annually – to be matched by universities – for 25 years. It was not without drama. The measure initially appeared short of GOP votes, and Democrats attempted to leverage their support in order to get a larger K-12 teacher pay raise and an extension of TANF dollars without strings. Once it was clear the Governor's team and legislative leaders had successfully ... ahem ... persuaded enough Republican legislators, a handful of Senate Democrats joined their GOP colleagues to assure the legislation had sufficient support.

Similar to sessions past, lawmakers this year continued to gain ground in Arizona's War on Bureaucracy, with heaps of bills aimed at cutting red tape, easing government regulations and cracking down on occupational licensing. Big winners include Advanced Practice Nurses, who were given more autonomy to do their jobs, as well as aspiring hairstylists like Juan Carlos Montesdeoca, who rose to national prominence when he came under investigation for giving free haircuts to Tucson's homeless. Then again, not every measure this session was about making people's jobs easier (just ask signature gatherers!). While most efforts focused on loosening laws, the Legislature also took action to tighten the

rules around Arizona's citizen-initiative process and to rein-in county law enforcement offices via their civil asset forfeiture polices.

In 2018, we head into an election season in which Governor Ducey and his fellow statewide office-holders face re-election, and all 90 legislative seats are up for grabs. That means even more of the partisan posturing, picketing and protesting that made 2017 so special.

Industry Overview

While this legislative session saw the introduction of numerous bills that could have impacted the community management industry, there were few successful bills. There were sixteen bills that were tracked as having a direct impact on homeowners' associations and the community management industry. Of the sixteen priority bills, five were successfully passed by the Legislature and sent to the Governor, and eleven failed to pass the Legislature. Of the five sent to the Governor, four were signed into law, and one bill was vetoed (Governor's veto letter is attached).

Finally, of those bills that did successfully pass the Legislature, AACM and its lobbying team were successful in providing input as to how bills could be made better, or what provisions should be removed. One bill in particular, HB2411, was significantly altered due to the work of AACM. Additionally, upon signing this bill, the Governor issued a signing letter (attached) that stated that he does not believe government should micromanage the operation of homeowners' associations, but signed the bill due to the compromise among the stakeholders represented in the bill. This signing letter was viewed positively by AACM.

Priority Bills Passed by the Legislature and Signed by the Governor

SB1060 homeowners' associations; dispute process (Sen. Griffin – R Hereford)

This bill makes technical changes related to the change in jurisdiction over administrative hearings for disputes between associations and members. Last year jurisdiction was moved to the State Real Estate Department from the Department of Fire, Building and Life Safety.

SB1175 real estate transfer fees; definition (Sen. Lesko – R Peoria)

This bill clarifies the definition of association as it relates to statutes prohibiting certain real estate transfer fees by expanding the definition to include nonprofit organizations qualified under section 502(c)(3) or 501(c)(4) of the Internal Revenue Code. It is retroactive to July 29, 2010.

HB2233 home-based businesses; regulations (Rep. Weninger – R Chandler)

This bill prohibits county ordinances from regulating or restricting the owner of a home-based business that holds a valid license from generating traffic, parking or delivery activity that does not cause on-street parking congestion or a substantial increase in traffic through the residential area. Ordinances also may not restrict the owner from having more than one client on the property at one time, or from employing residents of the primary dwelling, immediate family members, or one or two other individuals. The bill does not prohibit HOAs from regulating such activity.

HB2411 homeowners' associations; open meetings (Rep. Lovas – R Peoria)

This bill clarifies that the definition of "declaration" means any instrument, however denominated, that establishes restrictive covenants on the development or use of real property. Additionally, requiring advance notice of audiotaping or videotaping of open portions of board meetings is prohibited unless

the board audiotapes or videotapes the meeting and makes the unedited audiotapes or videotapes available to members without restrictions on its use. Boards must also declare the reason for entering into any closed portion of a meeting prior to entering into the closed portion of the meeting. Furthermore, it is clarified that only emergency matters that cannot be delayed for forty-eight hours may be acted upon at the emergency meeting, and it is also clarified what ballot material must be signed when conducting a vote. Finally, it is made clear that any delivery charge for discloser documents is part of the \$400 maximum fee, and not an additional charge.

Priority Bills Passed by the Legislature and Vetoed by the Governor

HB2321 homeowners' associations; cumulative voting; prohibition (Rep. Clark – D Phoenix)

Under this bill, condominium associations and homeowners' associations would have been prohibited from using cumulative voting. In the veto message, the Governor stated that it is not the role of government to regulate the way homeowners' associations vote in their board meetings.

Priority Bills Failed by the Legislature

SB1007 homebased business; operations; employees (Sen. Farnsworth – R Mesa)

The language of this bill was amended into HB2233 described above.

SB1113 homeowners' associations; artificial grass ban prohibited (Sen. Kavanagh – R Fountain Hills)

Under this bill, in any planned community that allowed grass on a member's property, a homeowner's association could not prohibit the installation or use of artificial grass on any member's property.

SB1240 homeowners' associations; streets; authority (Sen. Kavanagh – R Fountain Hills)

This bill declared that a homeowners' association has no authority over and cannot regulate any roadway for which the ownership has been dedicated to or is otherwise held by a governmental entity. It would have applied to all planned communities without regard to whether the declaration was recorded before or after the effective date of this legislation. Previously, these provisions applied only to planned communities for which the declaration was recorded after December 31, 2014.

SB1288 homeowners' associations; board conflicts (Sen. Farnsworth – R Mesa)

This bill expanded the list of reasons a condo or HOA board member was required to declare a conflict of interest to include any contract, decision or other action for compensation taken by the board that would benefit any employer or employee of that member. For all circumstances where a condo or HOA board member declared a conflict of interest, the board member was prohibited from playing a part directly or indirectly in the board's deliberations or vote on that issue, instead of being permitted to vote after the declaration.

SB1289 homeowners' associations; attorney fees (Sen. Farnsworth – R Mesa)

This bill prohibited an administrative law judge from awarding attorney fees to the association in a dispute between an owner and a condo association or homeowners' association, even where the association was the prevailing property.

SB1371 delinquent property taxes; common areas (Sen. Petersen – R Gilbert)

Under this bill, a tax that was levied against a residential common area that was valued as a common area would be the corporate liability of the homeowners' association, in addition to being a lien against the property. If a tax lien on a residential common area was sold to a purchaser, the tax lien was

satisfied on payment by the purchaser of the amount of delinquent taxes, interest and penalties, but the redemption and foreclosure provisions of statute would not apply and the purchaser's recourse was through judicial action against the homeowners' association.

SB1400 homeowners' associations; assessment liens; foreclosure (Sen. Farnsworth – R Mesa)

Under this bill, condominium association and homeowners' associations would have been required to offer a reasonable payment plan for assessments, for charges for late payment of assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to assessments, and were required to make and document that offer before attempting to foreclose on the lien or otherwise collect those monies. Such liens could be foreclosed only if the owner had been delinquent for two years, increased from one year, or in the amount of \$2,500 or more, increased from \$1,200, whichever occurred first.

SB1401 homeowners' associations; duties; gratuities (Sen. Farnsworth – R Mesa)

Under this bill, a condominium association or homeowners' association's employees and independent contractors, including "community managers" (defined) were prohibited from soliciting, receiving or accepting any undisclosed fee, compensation, commission or gratuity from any third party that provides or solicits to provide goods or services to the HOA. A community manager was statutorily required to act in good faith and in compliance with HOA documents and applicable law.

SB1402 homeowners' associations; improvement districts; zoning (Sen. Farnsworth – R Mesa)

This bill prohibited counties and municipalities from requiring as part of a subdivision approval or regulation or a zoning ordinance that a subdivider or developer establish a homeowner's association. Rather, subdividers or developers would be required to provide for the establishment of single-family residential property developments that do not include property held in common ownership and that are required to be included in an improvement district for the limited purpose of owning, operating and maintaining any detention and retention basins, landscaping, open spaces, parks, entryways, street rights-of-way, recreational facilities and other improvements for the benefit of the private property owners within the development and the improvement district. The bill did not prohibit a subdivider or developer from obtaining approval for a residential property development that does not include property held in common ownership without an improvement district.

SB1429 homeowners' associations; electronic records; fees (Sen. Farnsworth – R Mesa)

This bill prohibited condominium associations and homeowners' associations from charging a fee for electronic records consisting of nine or less megabytes of electronic data, and limited the fee to \$5 for each additional nine megabytes of electronic data.

HB2146 homeowners' associations; disclosure documents; agent (Rep. Weninger – R Chandler)

This bill would have required homeowner's associations and condo associations to deliver copies of the bylaws, rules, declaration and other specified documents to a purchaser and the purchaser's authorized agent, if any. Previously the association was required to deliver the documents to the purchaser OR the agent.

Conclusion

While this session saw the introduction of numerous bills that could have been dangerous to the community management industry and Arizona's homeowners' associations, AACM was successful in advocating for the freedom to contract, local nongovernmental control, and private property rights.

AACM continues to see an increase in Legislators reaching out to our lobbying team for input on legislation, which is fulfilling our goal to be the “Voice of Reason” at the Arizona State Capitol. AACM is encouraged by the Governor’s letters signaling his desire that government regulation steer clear of homeowners’ freedom to contract with one another.