

Arizona Association of Community Managers 2016 Final Legislative Session Report



**Prepared by Veridus LLC
June 3, 2016**

General Session Overview

The Arizona Legislature adjourned Sine Die at 5:45 a.m. on Saturday, May 7, 2016, after 117 days of action. During this regular session, lawmakers introduced 1,247 bills and 114 memorials & resolutions. In the end, 388 bills received final passage – 374 of which were signed into law. There were 14 vetoes. This session’s General Effective Date is August 6, 2016.

The 2016 legislative session is the second of the Ducey administration and differed in key respects from 2015. While last year’s session was noted for its brutal efficiency – at 81 days in length, it was the shortest session in nearly 50 years – the 2016 sequel moved in fits and starts. Much of the legislative action was squeezed into the final 24 hours, when legislators conducted more than 200 votes. According to The Arizona Republic, legislators voted on more bills in the final day than had been passed in the rest of the session combined – sending a flurry of more than 100 bills to the Governor’s desk for his consideration.

Consuming much of the Legislature’s time and energy this session were debates about the restoration of two high-profile state programs: Joint Technical Education Districts (JTEDs) and KidsCare, Arizona’s version of the Children’s Health Insurance Program (“CHIP”). Each measure was signed into law. Outside of the budget, Governor Ducey enjoyed success in achieving some of his own key initiatives, namely: the establishment of the Governor’s Economic Opportunity Office, a massive reduction to occupational licensing, and a preemptive city revenue sharing measure that will allow the Governor to withhold state dollars from municipalities under certain circumstances.

Other legislative battles of note included: a failed effort to expand autonomy for certain Advanced Practice Registered Nurses, approval of direct wine shipment, the shelving of a “Solar for All” initiative, failure of a measure to create consumer flex loans, the perennial debate over gun rights, approval of a measure to enable short-term rentals (think: Airbnb and HomeAway), discussions of same-sex couple adoption rights, and the minimum wage.

Change is the watchword as the Arizona Legislature now enters the interim period. As always, all 90 legislative seats are up for grabs this election year. Additionally, the reins of both the House and Senate will be changing hands, because Speaker Gowan and President Biggs are each running for Congress.

Industry Overview

This legislative session produced few successful bills that will have an impact on the community management industry, and those that do cause changes, will likely only have a light effect. There were 22 bills that were tracked as having a direct impact on HOAs and the community management industry. Of those 22 bills, 14 bills were tracked as priority legislation that either had a significant impact on the industry, or could have been used as a vehicle to add language via an amendment that significantly impacted the industry. Of the 14 priority bills, six were successfully passed by the Legislature and sent to the Governor, and eight failed to pass the Legislature. Of the six sent to the Governor, all were signed into law.

Additionally, through the Governor’s efforts to consolidate agencies, HOA administrative hearings were moved from the Department of Fire, Building and Life Safety (which will cease to exist) to the Department of Real Estate.

Of those bills that did successfully pass the Legislature, AACM and its lobbying team were successful in advocating for changes consistent with AACM's positions. For example, legislation that prohibits cities, towns, and counties from prohibiting short-term rentals like Airbnb, continues to allow regulation by HOAs. In its efforts, AACM has consistently proven to be an advocate of the freedom to contract and individual property rights.

Priority Bills Passed by the Legislature

SB1496 HOAs; director removal (Sen. Farnsworth – R Mesa)

The bill establishes procedures for the removal of a member of an HOA's board of directors (excluding a member appointed by a declarant). If at least one member is removed, but less than a majority of the members of the board, the vacancies shall be filled as provided in the documents. If a majority of the members of the board are removed, or if the documents do not provide for filling vacancies, the HOA shall hold an election for the replacement at a separate meeting to be held not later than thirty days after that meeting in which the board member was removed. Additionally, a member removed is not eligible to serve on the board until after the expiration of the removed's term of office, unless the documents specifically provide for a longer period of time. Finally, all documents and records related to any election or action taken for a director's replacement shall be retained for at least one year.

SB1498 HOAs; fees; hearings; elections (Sen. Farnsworth – R Mesa)

The bill modifies requirements relating to elections; late assessment and violation notifications for associations. Under the bill, an association may impose charges for late assessment payments only after notice that the assessment is overdue has been provided, or notice that the assessment will be overdue after a certain date is provided. Additionally, associations are to provide written notice of the option to petition for an administrative hearing for violations. The bill also stipulates a completed election ballot, envelope or related materials must contain the name, address and either the actual or electronic signature of the person voting, except that a secret ballot's envelope or nonballot-related materials must contain the specified information instead. Finally, the bill prescribes retention of all ballots, envelopes and related materials for one year in either electronic or paper format, and specifies the materials must be available for inspection.

HB2106 HOAs; enforcement grace period (Rep. Lovas – R Peoria)

The bill modifies the response period for a notice of violation from an HOA to 21 calendar days from ten business days.

HB2172 planned communities; architectural designs; approval (Rep. Petersen – R Gilbert)

Under the bill, an association's architectural design review committee cannot unreasonably withhold approval of a homeowner's construction project's architectural designs, plans and amendments.

HB2382 property; declaration amendment; procedure (Rep. Farnsworth – R Gilbert)

The bill creates a process for a planned community association to amend its declaration to be effective immediately on recordation of the amendment. The bill does not apply to condominiums or timeshares. The bill provides that an HOA may amend the declaration (with the declarant's written consent if during the period of declarant control) by an affirmative vote of eligible voters, and with the assent of any specified entities. If there is no HOA, the amendment may be brought by the owners of the property subject to the declaration. The amendment may apply to fewer than all the lots or less than all the property bound by the declaration. Any adopted amendment must be recorded within 30 and is effective upon recording.

HB2613 regulatory boards; licensing; revisions (Rep. Petersen – R Gilbert)

The bill eliminates several occupational licenses and related statutes. The bill requires a cost benefit analysis and feasibility report concerning the transfer of all non-health regulatory boards and occupational licenses to a new division within the Arizona Department of Administration.

Priority Bills Failed by the Legislature

SB1088 secured residential communities; process servers (Sen. Kavanagh – R Fountain Hills)

The bill would have required HOAs, or their agents, and owners or managing agents of a gated or secured apartment community, to allow a process server to access the gated or secured areas of the community in order to serve process. A security guard or other employee or agent of the community or association would have been prohibited from notifying the person who lives in the community that a process server was attempting to serve that person. The bill authorized the Attorney General or county attorney to enforce these requirements and to assess a civil penalty of up to \$250 per violation.

SB1497 HOAs; board conflicts (Sen. Farnsworth – R Mesa)

This bill would have expanded the list of reasons for which an HOA board member would be 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 an HOA board member declares a conflict of interest, the board member would have been prohibited from playing a part directly or indirectly in the board's deliberations or voting on that issue, instead of being permitted to vote after the declaration as allowed currently.

SB1499 HOAs; managers; licensure; hearings (Sen. Farnsworth – R Mesa)

Under the bill, any person engaged in the business of management of an HOA would have been required to obtain a license as a community manager. The Real Estate Department (Department) would have established by rule a licensure procedure for community managers to include specified instruction and a licensure test. The bill authorized the Department to charge a fee for licensure and for test administration. The bill also established a process for petitioning the Department for a hearing concerning violations of statutes or community documents, and removed a similar process from the responsibilities of the Department of Fire, Building and Life Safety.

HB2513 condominiums; exterior changes; approval (Rep. Rivero – R Peoria)

The bill would have prevented a condominium unit owner from changing the appearance of the exterior of a unit without the approval of a majority vote of the members of the condominium association, instead of being prohibited from changing the exterior appearance of a unit without the approval of a majority vote of the board.

HB2184 tobacco products; luxury tax refunds (Rep. Mitchell – R Litchfield Park)

HB2184 was tracked because it became a possible vehicle to amend with the provisions appearing in HB2513 described above.

HB2232 job training fund; lottery revenues (Rep. Bolding – D Laveen)

HB2232 was tracked because it became a possible vehicle to amend with a strike everything amendment that would have capped the late fees, penalties, interest, charges, costs or fees that a member would be liable.

HB2612 rental properties; prohibited penalties (Rep. Plumlee – D Tempe)

The bill prohibited landlords from retaliating by increasing rent or decreasing services or by imposing a fee, assessment or other penalty on a tenant after the tenant or other person in the household had summoned law enforcement or other emergency services to the premises. HOAs would have been prohibited from imposing on a unit owner or member a fee, assessment or other penalty for accessing law enforcement or other emergency services.

HB2656 HOAs; cumulative voting; prohibition (Rep. Clark – D Phoenix)

The bill would have prohibited HOAs from using cumulative voting.

Other Bills Passed by the Legislature

SB1350 online lodging; administration; definitions (Sen. Lesko – R Peoria)

Under the bill, regulations are established for online lodging, vacation and short-term rental operations. Cities and counties are prohibited from restricting vacation rentals and short-term rentals based upon their classification, use or occupancy, but may regulate for the public health and safety, building codes, zoning ordinances, or prohibiting housing sex offenders, and other enumerated purposes. The bill also allows for the registration of an online lodging marketplace (e.g. Airbnb) with the Department of Revenue for a license for the payment of taxes levied by the state or a political subdivision thereof. The bill does not prohibit HOAs from banning or restricting short-term rentals through their declaration as currently authorized by statute. However, it will impact communities that relied solely upon restrictions from cities and counties.

SB1530 agency consolidation; budget reconciliation; 2016-2017 (Sen. Biggs – R Mesa)

The bill was part of a larger budget package. The bill eliminated various agencies and transferred their duties to other agencies. As it relates to HOAs, the bill eliminated the Department of Fire, Building, and Life Safety (DFBLS). The responsibilities DFBLS had related to administrative dispute hearings was shifted to the Department of Real Estate, including responsibility and control over any funds related to the hearing process.

HB2341 potlucks; regulation exemption (Rep. Townsend – R Mesa)

The bill eliminates the requirement that food or drink served at a noncommercial social event (potluck) be at a workplace location. As a result, it is now possible to legally have potlucks at a location that is not your workplace (e.g. HOA clubhouses).

HB2592 nonprofit corporations; electronic voting (Rep. Ackerley – R Sahuarita)

The bill clarifies that a written ballot may be delivered to the members of a nonprofit corporation, such as an HOA, through an online voting system subject to the requirements in A.R.S. 33-1250 and 33-1812. Online voting is allowed where notice is provided that the vote will be conducted by electronic means, and a procedure exists where a member may obtain and cast a ballot through some other form of delivery. It is required that the online voting system: 1) verify the member's identity, 2) verify the validity of each electronic vote, 3) transmit a receipt to each member who casts an electronic vote, and 4) store electronic votes for recount, inspection and review.

Conclusion

While this session saw the introduction of numerous bills that could have been dangerous to the community management industry and Arizona's HOAs, AACM was successful in advocating for the freedom to contract 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 will monitor the upcoming election cycle for changes in the political landscape, and make plans for the next legislative session to continue to effectively advocate for our members and the community management industry.