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Are Transfer Fees Still Legal?

In 2010, the Arizona legislature created and passed three new bills that will become law on July 29th, 2010. One of those bills, HB2768 (creating A.R.S. Section 33-442) regarding Transfer Fees, is a bill that impacts planned communities, condominiums and management companies by changing how transfer fees are currently being charged when a sale or the transfer of a lot/unit occurs.

In our firm's opinion, HB 2768 (creating A.R.S. Section 33-442) is one of the most confusing and complicated laws ever passed regarding community associations and can create problems for associations trying to comply.

Set forth below is our firm's simplified interpretation of HB 2768.

Transfer Fees: An association can charge a transfer fee, capital contribution fee or reserve assessment fee that becomes due at a close of escrow when the following requirements are met:

1. the governing documents (typically the CC&Rs) grant authority for the fee and provides for a specified purpose for the assessment;
2. the fee being charged touches and concerns the land; and
3. the fee does not go to a third party (such as a management company) or developer unless the third party or developer is authorized in the governing documents (CC&Rs) to manage the real property within the association or was part of an approved development plan.

This new law means that associations can continue to charge a transfer fee, capital contribution fee or reserve assessment fee that becomes due at a close of escrow when:

1. the CC&Rs specifically allow this type of fee; and
2. the fee is paid to the association, management company or developer which is authorized in the CC&Rs to manage real property within the association or was part of an approved development plan.

Further, HB2768 also allows an association to charge any fee or charge that is imposed by a document and that is payable to a non-profit *corporation* (note: most associations in Arizona are non-profit corporations) for the sole purpose of supporting recreational activities within the association.

Can associations continue to charge Resale Disclosure Fees? Yes. HB 2768 does not affect an association's ability to charge a "resale disclosure fee" pursuant to A.R.S. Sections 33-1260(C) or 33-1806(C).

Can associations continue to charge transfer fees pursuant to the Arizona Non-Profit Corporation Act when an association's CC&Rs do not authorize a transfer fee? Yes. In our firm's opinion, HB 2768 does not affect an association's ability to charge a "transfer fee" pursuant to the Arizona Non-Profit Corporation Act [A.R.S. Section 10-3302(16)] when the transfer fee is consistent with the cost to transfer membership from one owner to another owner. Our firm suggests that a transfer fee pursuant to this section not exceed \$500.

Transfer Fee Program

Because of the complexity of this new law we are receiving many calls regarding compliance and therefore have created a Transfer Fee Program.

Mulcahy Law Firm, P.C. will:

- 1) *analyze your documents for compliance;*
 - 2) *prepare any documents necessary to help protect your transfer fees from legal challenge;*
 - 3) *provide an easy to understand compliance opinion letter; and*
 - 4) *one of our attorneys will provide a one on one explanation of findings regarding your association.*
- Our Transfer Fee Review Program is offered for a fee of \$425.*