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HOA Bills Signed by Governor Brewer

The Arizona 49th Legislature, 2nd Regular session closed on Thursday, April 29, 2010 at 11:07 p.m. During the session, Governor Brewer signed two HOA bills that will affect Community Associations and Condominiums in the future. They become law ninety days after the close of the legislative session, July 29, 2010. Please find a summary of HB2345 and HB2768 below. You may click on the red title at the beginning of each summary to be linked to the bill. If you have questions please call our office at 602.241.1093.

Open House / For Lease Signs HB2345 was signed by the Governor in April, 2010 and amends the Condominium Act (ARS 33-1261) and the Planned Communities Act (ARS 33-1808).

HB2345 prohibits an association from prohibiting or regulating temporary open house signs, for sale signs or for lease signs. An Association may not require the use of a particular sign indicating an open house, for sale or for lease signs so long as the signs are not larger than the industry standard size (e.g. 18 by 24 inches) and owned by the seller or seller's agent. An association may not limit hours for an open house for real estate that is for sale or for lease, except for before 8:00 a.m. or after 6:00 pm. However, if an association's documents prohibit or restrict the leasing of a member's property, the association may prohibit or restrict for lease signs and open house signs for real estate for lease. An association may prohibit open house signs on the association's common areas.

Transfer Fee - HB2768 was signed by the Governor and creates ARS 33-442. HB2768 has a potential effect on the Association's ability to charge fees that become due at the time of the close of escrow; however, the bill essentially codifies our firm's opinion regarding the association's authority to impose a charge at the time of the transfer of a lot/unit, which is if an association wants to collect a fee at the time of the close of escrow, the fee and its allocated purpose should be authorized by the association's governing documents. HB2768 prohibits a provision in an association's governing document if it purports to do both of the following: (1) bind successors in title to the specified real property; and (2) obligate the transferee or transferor to pay a fee or charge to a declarant or third party at the time of the transfer of title. However, the bill permits an association to charge fees that become due at the close of escrow (e.g. capital contribution fees; reserve assessments; etc.) so long as the following circumstances are complied: (1) a provision in the association's governing documents grants authority for the assessment and provides for a specified purpose for the assessment; (2) the fee being charged must touch and concern the land; and (3) no portion of the fee or charge is required to be passed through to a third party or declarant unless the third party or declarant is authorized in the document to manage real property within the association or was part of an approved development plan.

Moreover, the bill permits an association to charge an amount related to the purchase or transfer of a club membership related to the real property owner by the transferor and a fee or charge imposed by a document for the purpose of supporting recreational activities within the Association.

The bill does not assert to amend or have any affect on an association's continued ability to assess transfer fees and disclosure fees that are permitted by other applicable state statutes: (1) Disclosure Fees permitted under the Condominium act and Planned Communities Act; and (2) Transfer Fees permitted by the Non-profit Corporation Act.