

REFERENCE TITLE: homeowners' associations; disputes; administrative
hearings

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1148

Introduced by
Senator Biggs

AN ACT

AMENDING SECTIONS 41-2141, 41-2198.02 AND 41-2198.04, ARIZONA REVISED
STATUTES; RELATING TO THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-2141, Arizona Revised Statutes, is amended to
3 read:

4 41-2141. Department of fire, building and life safety:
5 establishment; purposes; components

6 A. The department of fire, building and life safety is established to
7 further the public interest of safety and welfare by maintaining and
8 enforcing standards of quality and safety for manufactured homes, mobile
9 homes and factory-built buildings and by reducing hazards to life and
10 property through the maintenance and enforcement of the state fire code by
11 providing fire training, fire investigations and public life safety education
12 as provided for in this chapter.

13 B. THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY HAS AS AN
14 ADDITIONAL PURPOSE THE PROTECTION OF THE PUBLIC INTEREST IN MAINTAINING THE
15 SUBSTANTIAL RESPONSIBILITY FOR INTERPRETING AND ENFORCING THE TERMS OF MOBILE
16 HOME PARK RENTAL AGREEMENTS THROUGH ITS HEARING OFFICER FUNCTIONS AND HAS
17 EXERCISED THAT RESPONSIBILITY FOR MOBILE HOME COMMUNITIES FOR MANY YEARS,
18 INCLUDING INTERPRETATION OF STATUTES REGULATING THOSE COMMON INTEREST
19 COMMUNITIES AND THE INTERPRETATION AND ENFORCEMENT OF THE OTHERWISE PRIVATE
20 CONTRACTS AND RULES THAT GOVERN THOSE COMMUNITIES, EVEN THOUGH THE
21 COMMUNITIES THEMSELVES ARE NOT DIRECTLY LICENSED BY THE DEPARTMENT.
22 ACCORDINGLY, THE DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY PERFORMS A
23 SIMILAR FUNCTION FOR CONDOMINIUMS REGULATED BY TITLE 33, CHAPTER 9 AND
24 PLANNED COMMUNITIES REGULATED BY TITLE 33, CHAPTER 16 IN THAT THE DEPARTMENT,
25 THROUGH ITS HEARING OFFICER FUNCTION, APPLIES AND ENFORCES THE STATUTES
26 REGULATING THOSE COMMON INTEREST COMMUNITIES AND THE INTERPRETATION AND
27 ENFORCEMENT OF THE OTHERWISE PRIVATE CONTRACTS AND RULES THAT GOVERN THOSE
28 COMMUNITIES. SIMILARLY, THE DEPARTMENT DOES NOT DIRECTLY LICENSE THOSE
29 COMMUNITIES. It is also the purpose of the department to establish a
30 procedure to protect the consumer of such products and services, INCLUDING
31 THE OWNERS IN CONDOMINIUMS AND PLANNED COMMUNITIES AS WELL AS THE RENTERS IN
32 MOBILE HOME PARK COMMUNITIES.

33 ~~B.~~ C. The department of fire, building and life safety consists of
34 the board of manufactured housing, the installation standards committee, the
35 state fire safety committee and the director of the department. The
36 director's office consists of the deputy director, the office of manufactured
37 housing, the office of state fire marshal and the office of administration.

38 ~~C.~~ D. The attorney general shall act for the department in all legal
39 actions or proceedings and shall advise the department on all questions of
40 law arising out of the administration of this chapter.

41 Sec. 2. Section 41-2198.02, Arizona Revised Statutes, is amended to
42 read:

43 41-2198.02. Orders; penalties; disposition

44 A. The administrative law judge may order any party to abide by the
45 statute, condominium documents, community documents or contract provision at
46 issue and may levy a civil penalty on the basis of each violation. For

1 purposes of actions brought under the Arizona mobile home parks residential
2 landlord and tenant act, the civil penalty shall not exceed five hundred
3 dollars. All monies collected pursuant to this article shall be deposited in
4 the state general fund to be used to offset the cost of administering the
5 administrative law judge function, except that monies collected from disputes
6 involving condominiums or planned communities as prescribed in section
7 41-2198.01, subsection B shall be deposited in the condominium and planned
8 community hearing office fund established by section 41-2198.05. If the
9 petitioner prevails, the administrative law judge shall order the respondent
10 to pay to the petitioner the filing fee required by section 41-2198.01.

11 B. The order issued by the administrative law judge is binding on the
12 parties unless a rehearing is granted pursuant to section 41-2198.04 based on
13 a petition setting forth the reasons for the request for rehearing, in which
14 case the order issued at the conclusion of the rehearing is binding on the
15 parties. ~~Notwithstanding sections 41-1092.08, subsection B and 41-1092.09,~~
16 ~~an order issued by the administrative law judge in an action regarding a~~
17 ~~condominium or planned community is the final administrative decision and is~~
18 ~~not subject to a request for rehearing.~~ The order issued by the
19 administrative law judge is enforceable through contempt of court proceedings
20 AND IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED BY SECTION 41-1092.08.

21 Sec. 3. Section 41-2198.04, Arizona Revised Statutes, is amended to
22 read:

23 41-2198.04. Rehearing; appeal

24 A. ~~Except for an action relating to condominium documents or planned~~
25 ~~community documents or the statutes regulating condominiums or planned~~
26 ~~communities,~~ A person aggrieved by a decision of the administrative law judge
27 may apply for a rehearing by filing with the director a petition in writing
28 pursuant to section 41-1092.09. Within ten days after filing such petition,
29 the director shall serve notice of the request on the other party by mailing
30 a copy of the petition in the manner prescribed in section 41-2198.01 for
31 notice of hearing.

32 B. The filing of a petition for rehearing temporarily suspends the
33 operation of the administrative law judge's action. If the petition is
34 granted, the administrative law judge's action is suspended pending the
35 decision on the rehearing.

36 C. In the order granting or denying a rehearing, the director shall
37 include a statement of the particular grounds and reasons for the director's
38 action on the petition and shall promptly mail a copy of the order to the
39 parties who have appeared in support of or in opposition to the petition for
40 rehearing.

41 D. In a rehearing conducted pursuant to this section, a corporation
42 may be represented by a corporate officer or employee who is not a member of
43 the state bar if:

44 1. The corporation has specifically authorized such officer or
45 employee to represent it.

1 2. Such representation is not the officer's or employee's primary duty
2 to the corporation but is secondary or incidental to such officer's or
3 employee's duties relating to the management or operation of the corporation.

4 Sec. 4. Legislative findings and intent: department of fire,
5 building and life safety; community disputes

6 It is the intent of the legislature to find, determine and clarify all
7 of the following after careful consideration of the case Gelb v. Department
8 of Fire, Building and Life Safety, 1 CA CV 09-0744, filed October 28, 2010
9 (Ct. App. 2010):

10 1. The department of fire, building and life safety has exercised
11 substantial responsibility for many years in the enforcement and application
12 of state laws and private contracts that regulate the relationships between
13 those who reside in and those who control certain types of common housing,
14 namely, mobile home park residential communities.

15 2. The legislature has determined that while the direct licensure of
16 mobile home parks and their owners may not have been necessary, the
17 regulation of their private, legal relationships with their tenants has been
18 and continues to be an important consumer protection function of the
19 department of fire, building and life safety and that department has
20 developed considerable expertise in interpreting, enforcing and applying the
21 statutes relating to these mobile home communities and in interpreting,
22 applying and enforcing the terms of the leases, rules and other documents
23 that regulate the relationship between the residents of the mobile home parks
24 and the owners and managers of those parks, and doing so in a cost-effective
25 manner for the residents.

26 3. The legislature further determines and finds that while direct
27 licensure and regulation of condominiums and planned communities may not be
28 necessary at this time, the legislature has repeatedly found over the years
29 that owners in condominiums and planned communities are frequently subjected
30 to inconsistent, unreasonable and often unlawful enforcement and application
31 of the declarations, rules and bylaws that govern their communities, their
32 managers and their boards of directors, and owners are often unable to afford
33 the cost of formally litigating their disputes in the superior court.

34 4. The legislature further finds that the continuing use of the
35 existing hearing officer function in the department of fire, building and
36 life safety will provide for an efficient use of already-established common
37 interest community expertise at this agency, will provide an important
38 consumer protection for owners in condominiums and planned communities and
39 will efficiently and effectively provide for resolution of these common
40 interest community disputes without the expense, formality and difficulty of
41 requiring a trial in the superior court in every instance, and will do so
42 without the cost and bureaucratic complexity of creating an entirely new
43 administrative body to perform these important functions, while still
44 maintaining the ability and right to recourse in the superior court, and
45 without threat to the core functions of the judiciary.