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CARPENTER HAZLEWOOD DELGADO & WOOD

E-NEWSLETTER

HB 2084: Public Parking and Regulation of Planned Communities By Scott B. Carpenter, Esq.

Many of our clients are asking, "What's going on at the Legislature this year?" As you may know, the Legislature has been working on budget issues since they convened in January. However, there is one bill that has moved from the House to the Senate and awaits action in the Senate (the bill passed the house on a vote of 44 "yes" and 11 "no"). It is HB2034. HB2034 is not (yet) law. It is a proposed statute that would amend the planned community statutes (it would have no effect on condominiums), and would add the following section 33-1817:

Notwithstanding any provision in the community documents, an association has no authority over and shall not regulate any roadway, easement or other area for which the ownership or use has been dedicated to a governmental entity or that is otherwise under the legal authority of a governmental entity.

Using ellipses, HB2034 states as follows:

Notwithstanding any provision of the community documents, an association has no authority over and shall not regulate any...area...that is...under the legal authority of a governmental entity.

By reading it this way, some have argued that community restrictions that govern planned communities would be rendered null and void. "Area" could include the Lots where the homes sit, private gated streets, and all other areas including community pools and playground areas. Associations could no longer enforce swimming pool rules, playground hours of operation, architectural limitations, etc. According to this argument, all property in planned community associations is "under the legal authority of a governmental entity" because every inch of property in Arizona is under the legal authority of at least three governmental entities (the federal government, the State of Arizona and the appropriate Arizona county).

Although not all planned community associations care about parking on publicly dedicated streets and some planned community associations have private streets and therefore would appear to be less interested in HB2034, the challenge is that, as drafted, HB2034 could create problems for every planned community in Arizona.

At the moment, HB2034 is awaiting action in the Senate and has been assigned to the Senate Government Institutions Committee. If you are interested, you could provide your perspective on HB2034 to the members of this committee (phone, fax and e-mail contact information can be found at www.azleg.gov):

Senator Manny Alvarez
Senator Linda Gray

Senator Meg Burton Cahill
Senator Jack Harper

Senator Jorge Luis Garcia
Senator Jay Tibshraeny (chair)

Senator Chuck Gray
Senator Jim Waring

This firm is sensitive to the legitimate differences of opinion that exist on the difficult issue of parking on publicly dedicated streets. The point of this newsletter is not to advocate "for" or "against" a bill that would address that issue. The goal of this newsletter is to provide awareness to our friends and clients that the bill, as drafted, has challenging language that could provide problems for all planned communities if enacted into law.



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