2022 CHANGES IN THE LAW AFFECTING ARIZONA HOMEOWNERS ASSOCIATIONS ("HOAs")

LAWS TAKE EFFECT SEPTEMBER 24, 2022
UNLESS OTHERWISE INDICATED

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This course is approved by Community Association Managers International Certification Board (CAMICB) to fulfill continuing education requirements for the CMCA® certification. www.Camicb.org.

This Guide to the 2022 Changes in the Law affecting Arizona Homeowners Associations ("HOAs") is meant to provide a summary of the recent revisions to the laws that govern Arizona Community Associations. This Guide also contains tips to understand and abide by the new changes in the laws. *This Guide is available to download from our website at:* ***http://www.shawlines.com*.**

TABLE OF CONTENTS

I. HB 2010 - FIRST RESPONDER FLAGS; HOMEOWNERS' ASSOCIATIONS Amending A.R.S. 33-1261 (Condominiums) and A.R.S. 33-1808 (Planned Communities)……..……...……..3

II. HB 2131- PLANNED COMMUNITIES ONLY; ARTIFICIAL GRASS – NEW A.R.S. 33-1819……..……...3

III. H.B. 2158 – POLITICAL ACTIVITY IN HOMEOWNER ASSOCIATIONS Amending A.R.S. 33-1261(J) (Condominiums) and A.R.S. 33-1808(M) (Planned Communities) ……...……...……...…….4

IV. H.B. 2158 – POLITICAL SIGNS IN HOMEOWNER ASSOCIATIONS Amending A.R.S. 33-1261 (Condominiums) and A.R.S. 33-1808 (Planned Communities) ……...……...…….4

V. H.B. 2275 – CONDOMINIUM TERMINATION Amending A.R.S. 33-1227 and A.R.S. 33-1228……..……...…….5

VI. IMPORTANT CASELAW CHANGES

A. <u>Kalway v. Calabria Ranch HOA, LLC</u>, No. CV-20-0152-PR (Ariz. 2022) ……..…….….6

ADDENDUM A: HB 2010……...……...……..…….7
ADDENDUM B: HB 2131……...……...……..…….8
ADDENDUM C: H.B. 2158……...……...…….……...….9
ADDENDUM D: <u>Kalway v. Calabria Ranch HOA, LLC</u>, No. CV-20-0152-PR (Ariz. 2022)…….……10

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I. HB 2010 - FIRST RESPONDER FLAGS; HOMEOWNERS' ASSOCIATIONS Amending A.R.S. 33-1261 (Condominiums) and A.R.S. 33-1808 (Planned Communities)

HB 2010 adds new flags to the list of flags that HOAs must allow be displayed on an owner's property.

Pursuant to A.R.S. 33-1261(A)(6) (Condominiums) and A.R.S. 33-1808(A)(6), a "First Responder Flag," as defined by A.R.S. 33-1261(K) (Condominiums) and A.R.S. 33-1808(M) (Planned Communities), may now be displayed on an owner's property. A "First Responder Flag" may incorporate the design of one or two other first responder flags to form a combined flag.

Pursuant to A.R.S. 33-1261(A)(7) (Condominiums) and A.R.S. 33-1808(A)(7) (Planned Communities) "Blue Star Service Flag" and a "Gold Star Service Flag" may also be displayed on an owner's property.

II. HB 2131- PLANNED COMMUNITIES ONLY; ARTIFICIAL GRASS – NEW A.R.S. 33-1819

New A.R.S. 33-1819 adds language to the Arizona Planned Communities Act prohibiting planned community associations from banning the installation of artificial grass on an owner's property. There are a number of caveats, such as:

1. If the Association maintains the grass on the owner's property, the Association may still prohibit artificial turf **(A.R.S. 33-1819(B))**;

2. If the Association prohibits the installation of natural grass on an owner's property, the Association may still prohibit artificial turf **(A.R.S. 33-1819(B))**;

3. The Association can create reasonable rules regarding the installation of artificial turf and the quality of artificial turf so long as the rules do not ultimately prohibit the installation of artificial turf **(A.R.S. 33-1819(A)(1))**;

4. The Association can require that artificial turf be removed if the turf creates a health or safety concern **(A.R.S. 33-1819(A)(2))**;

5. The Association can require that artificial turf be replaced or removed if the turf is not properly maintained **(A.R.S. 33-1819(A)(3))**;

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6. In instances where an Association's Declaration requires natural open spaces or natural terrain exist on an owner's Lot, the Association may continue to prohibit artificial turf **(A.R.S. 33-1819(D)(1) and (D)(2))**.

Also, if a lawsuit is filed by an owner against the Association regarding A.R.S. 33-1819, the prevailing party is entitled to its reasonable attorney's fees and costs. **(A.R.S. 33-1819(C))**

III. H.B. 2158 – POLITICAL ACTIVITY IN HOMEOWNER ASSOCIATIONS

Amending A.R.S. 33-1261(J) (Condominiums) and A.R.S. 33-1808(M) (Planned Communities)

Notwithstanding any provision in a HOA's governing documents, HOAs may not prohibit or unreasonably restrict an owner's ability to peacefully assemble and use common elements/areas of the HOA if done in compliance with reasonable restrictions for the use of the common elements/areas adopted by the Board of Directors. An individual owner or group of owners may assemble to discuss matters related to the HOA, including board of director elections or recalls, potential or actual ballot issues or revisions to the HOA's governing documents, property maintenance or safety issues or any other "HOA matters."

Also, an owner may invite one political candidate or one non-owner guest to speak to an assembly of owners about matters related to the HOA. The HOA shall not prohibit an owner from posting notices regarding those assemblies of owners on bulletin boards located on the common elements/areas or within common elements/areas facilities. An assembly of owners prescribed by this subsection does not constitute an official owners' meeting unless the meeting is noticed and convened as prescribed in the HOA's governing documents or Arizona Law.

IV. H.B. 2158 – POLITICAL SIGNS IN HOMEOWNER ASSOCIATIONS

Amending A.R.S. 33-1261 (Condominiums) and A.R.S. 33-1808 (Planned Communities)

Arizona HOAs may not prohibit the display of an "Association-specific political sign" by an owner on the owner's property. An "Association-specific political sign" is defined as

> A sign that supports or opposes a candidate for the board of directors or the recall of a board member or a planned community (or condominium) ballot measure that requires a vote of the association members. **A.R.S. 33-1261(M)(1) (Condominiums) and A.R.S. 33-1808(O)(1) (Planned Communities)**

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In **Condominiums**, "Association-specific political signs" may be placed on any limited common element for the specific unit (including doors, walls or patios) or other limited common elements that touch the unit, other than the roof. **A.R.S. 33-1261(H)** The Association may limit the aggregate total dimensions of all "Association-specific political signs" to 9 square feet. **A.R.S. 33-1261(H)(2)**

In **Planned Communities**, "Association-specific political signs" may be placed on any property owned by the owner. **A.R.S. 33-1808(K)** The Association may limit the aggregate total dimensions of all "Association-specific political signs" to 9 square feet. **A.R.S. 33-1808(K)(2)**

For both **Condominiums and Planned Communities**, the Association may create reasonable rules concerning "Association-specific political sings" so long as those rules comply with the following:

> "Association-specific political signs" may be displayed starting the date that an absentee ballot/consent is provided to the owners and "Association-specific political signs" must be removed **3 days** after the date of the specific election. **A.R.S. 33-1261(H)(1) - A.R.S. 33-1808(K)(1)**
>
> Associations may not require that "Association-specific political signs" be professionally manufactured nor may the regulate the number of candidates or causes advocated for on the signs. **A.R.S. 33-1261(H)(3) and (4) - A.R.S. 33-1808(K) (3) and (4)**
>
> Associations may **not** regulate the content of "Association-specific political signs" unless the content contains profanity, discriminatory images or text based on race, color, religion, sex familiar status of national origin as prescribed by Federal or State Fair Housing Laws. **A.R.S. 33-1261(H)(5) - A.R.S. 33-1808(K)(5)**

V. H.B. 2275 – CONDOMINIUM TERMINATION Amending A.R.S. 33-1227 and A.R.S. 33-1228

This new law requires that a condominium created on or after September 24, 2022 may be terminated only by agreement of unit owners of units to which ninety-five percent (95%) of the votes in the condominium association are allocated, or any larger percentage the declaration specifies.

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VI. IMPORTANT CASELAW CHANGES

Kalway v. Calabria Ranch HOA, LLC, No. CV-20-0152-PR (Ariz. 2022)

Kalway v. Calabria Ranch HOA, LLC, No. CV-20-0152-PR (Ariz. 2022), which was promulgated on March 22, 2022, is an Arizona Supreme Court Case that severely changes how HOAs may amend their CC&Rs.

Pursuant to Kalway, HOAs in Arizona can no longer rely on the general amendment provisions of their CC&Rs to add new restrictive covenants to the CC&Rs or to completely remove restrictive covenants from the CC&Rs.

The Court in Kalway held that an "original declaration must give sufficient notice of the possibility of a future amendment; that is, amendments must be reasonable and foreseeable." Kalway at ¶10 A "HOA cannot create new affirmative obligations where the original declaration did not provide notice to the homeowners that they might be subject to such obligations… Allowing substantial, unforeseen, and unlimited amendments would alter the nature of the covenants to which the homeowners originally agreed…. The notice requirement relies on a homeowner's reasonable expectations based on the declaration in effect at the time of purchase." Kalway at ¶15 and ¶16

The Court further clarified that CC&Rs do "not have to necessarily give notice of the particular details of a future amendment… Instead, it (the CC&RS) must give notice that a restrictive or affirmative covenant exists and that the covenant can be amended to refine it, correct an error, fill in a gap, or change it in a particular way… **But future amendments cannot be "entirely new and different in character," untethered to an original covenant… Otherwise, such an amendment would infringe on property owners' expectations of the scope of the covenants." Kalway at ¶17**

It would be wise that HOAs request that any potential amendment to the CC&Rs be reviewed by the HOA's attorney to ensure that the potential amendment will not violate the Kalway case.

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ADDENDUM A: HB 2010

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Senate Engrossed House Bill

~~first responder flags; homeowners' associations~~
(now: flags; homeowners' associations)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 272

HOUSE BILL 2010

AN ACT

AMENDING SECTIONS 33-1261 AND 33-1808, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-1261, Arizona Revised Statutes, is amended to read:

33-1261. Flag display; for sale, rent or lease signs; political signs and activities; applicability; definitions

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of THE UNIFORMED SERVICES OF the United States ~~army, navy, air force, marine corps or coast guard~~ by a unit owner on that unit owner's property if the American flag or ~~military~~ A UNIFORMED SERVICES flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

6. A FIRST RESPONDER FLAG. A FIRST RESPONDER FLAG MAY INCORPORATE THE DESIGN OF ONE OR TWO OTHER FIRST RESPONDER FLAGS TO FORM A COMBINED FLAG.

7. A BLUE STAR SERVICE FLAG OR A GOLD STAR SERVICE FLAG.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the ~~American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag~~ FLAGS PRESCRIBED BY SUBSECTION A OF THIS SECTION. The association rules may regulate the location and size of flagpoles but shall not prohibit the installation of a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit ~~the use of~~ USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit ~~the circulation of~~ CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door-to-door political activity regarding candidates or ballot issues from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign on that unit owner's property, including any limited common elements for that unit that are doors, walls or patios or other limited common elements that touch the unit, other than the roof. An association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

F. An association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

G. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

H. A condominium is not required to comply with subsection D of this section if the condominium restricts vehicular or pedestrian access to the condominium. This section does not require a condominium to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

I. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months ~~from~~ AFTER the date of the violation.

J. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

K. For the purposes of this section: ~~,~~

1. "FIRST RESPONDER FLAG" MEANS A FLAG THAT RECOGNIZES AND HONORS THE SERVICES OF ANY OF THE FOLLOWING:

(a) LAW ENFORCEMENT AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "LAW ENFORCEMENT", "POLICE", "OFFICERS", "FIRST RESPONDER", "HONOR OUR", "SUPPORT OUR" AND "DEPARTMENT" AND THE SYMBOL OF A GENERIC POLICE SHIELD IN A CREST OR STAR SHAPE.

(b) FIRE DEPARTMENT AND THAT IS LIMITED TO THE COLORS RED, GOLD, BLACK AND WHITE, THE WORDS "FIRE", "FIGHTERS", "F", "D", "FD", "FIRST RESPONDER", "DEPARTMENT", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC MALTESE CROSS.

(c) PARAMEDICS OR EMERGENCY MEDICAL TECHNICIANS AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "FIRST RESPONDER", "PARAMEDIC", "EMERGENCY MEDICAL", "SERVICE", "TECHNICIAN", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC STAR OF LIFE.

2. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

Sec. 2. Section 33-1808, Arizona Revised Statutes, is amended to read:

33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political activities; definitions

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of THE UNIFORMED SERVICES OF the United States ~~army, navy, air force, marine corps or coast guard~~ by an association member on that member's property if the American flag or ~~military~~ A UNIFORMED SERVICES flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

6. A FIRST RESPONDER FLAG. A FIRST RESPONDER FLAG MAY INCORPORATE THE DESIGN OF ONE OR TWO OTHER FIRST RESPONDER FLAGS TO FORM A COMBINED FLAG.

7. A BLUE STAR SERVICE FLAG OR A GOLD STAR SERVICE FLAG.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the ~~American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag~~ FLAGS PRESCRIBED BY SUBSECTION A OF THIS SECTION. The association rules may regulate the location and size of flagpoles, may limit the member to displaying not more than two flags at once and may limit the height of the flagpole to not more than the height of the rooftop of the member's home but shall not prohibit the installation of a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

D. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet.

E. Notwithstanding any provision in the community documents, an association shall not prohibit ~~the use of~~ USING cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.

2. The signs are removed within one hour of children ceasing to play.

3. The signs are displayed only when children are actually present within fifty feet of the sign.

4. The temporary signs are not taller than three feet in height.

5. The signs are professionally manufactured or produced.

F. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

G. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit ~~the use of~~ USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

H. Notwithstanding any provision in the community documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit ~~the circulation of~~ CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door-to-door political activity from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

I. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

J. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

K. A planned community is not required to comply with subsection H OF THIS SECTION if the planned community restricts vehicular or pedestrian access to the planned community. This section does not require a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of

political petitions to anyone who is not an owner or resident of the community.

L. An association or managing agent that violates subsection G of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months ~~from~~ AFTER the date of the violation.

M. For the purposes of this section: ~~,~~

1. "FIRST RESPONDER FLAG" MEANS A FLAG THAT RECOGNIZES AND HONORS THE SERVICES OF ANY OF THE FOLLOWING:

(a) LAW ENFORCEMENT AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "LAW ENFORCEMENT", "POLICE", "OFFICERS", "FIRST RESPONDER", "HONOR OUR", "SUPPORT OUR" AND "DEPARTMENT" AND THE SYMBOL OF A GENERIC POLICE SHIELD IN A CREST OR STAR SHAPE.

(b) FIRE DEPARTMENT AND THAT IS LIMITED TO THE COLORS RED, GOLD, BLACK AND WHITE, THE WORDS "FIRE", "FIGHTERS", "F", "D", "FD", "FIRST RESPONDER", "DEPARTMENT", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC MALTESE CROSS.

(c) PARAMEDICS OR EMERGENCY MEDICAL TECHNICIANS AND THAT IS LIMITED TO THE COLORS BLUE, BLACK AND WHITE, THE WORDS "FIRST RESPONDER", "PARAMEDIC", "EMERGENCY MEDICAL", "SERVICE", "TECHNICIAN", "HONOR OUR" AND "SUPPORT OUR" AND THE SYMBOL OF A GENERIC STAR OF LIFE.

2. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

APPROVED BY THE GOVERNOR JUNE 6, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 6, 2022.

ADDENDUM B: HB 2131

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Senate Engrossed House Bill

~~HOAs; artificial grass ban prohibited~~
(now: artificial grass ban prohibited; HOAs)

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 101

HOUSE BILL 2131

AN ACT

AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1819; RELATING TO PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 33, chapter 16, article 1, Arizona Revised Statutes, is amended by adding section 33-1819, to read:

33-1819. Artificial turf ban; prohibition; restrictions; attorney fees; applicability

A. EXCEPT AS PRESCRIBED IN SUBSECTION B OF THIS SECTION AND NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, IN ANY PLANNED COMMUNITY THAT ALLOWS NATURAL GRASS ON A MEMBER'S PROPERTY, AFTER THE PERIOD OF DECLARANT CONTROL, THE ASSOCIATION MAY NOT PROHIBIT INSTALLING OR USING ARTIFICIAL TURF ON ANY MEMBER'S PROPERTY. AN ASSOCIATION MAY DO ALL OF THE FOLLOWING:

1. ADOPT REASONABLE RULES REGARDING THE INSTALLATION AND APPEARANCE OF ARTIFICIAL TURF IF THOSE RULES DO NOT PREVENT INSTALLING ARTIFICIAL TURF IN THE SAME MANNER THAT NATURAL GRASS WOULD BE ALLOWED BY THE COMMUNITY DOCUMENTS. THOSE RULES MAY REGULATE THE LOCATION ON THE PROPERTY AND PERCENTAGE OF THE PROPERTY THAT MAY BE COVERED WITH ARTIFICIAL TURF TO THE SAME EXTENT AS NATURAL GRASS AND MAY REGULATE ARTIFICIAL TURF QUALITY.

2. REQUIRE THE REMOVAL OF A MEMBER'S ARTIFICIAL TURF IF THE ARTIFICIAL TURF CREATES A HEALTH OR SAFETY ISSUE THAT THE MEMBER DOES NOT CORRECT.

3. REQUIRE REPLACEMENT OR REMOVAL OF THE ARTIFICIAL TURF IF THE ARTIFICIAL TURF IS NOT MAINTAINED IN ACCORDANCE WITH THE ASSOCIATION'S STANDARDS FOR MAINTENANCE.

B. THE ASSOCIATION MAY PROHIBIT THE INSTALLATION OF ARTIFICIAL TURF IF THE ARTIFICIAL TURF WOULD BE INSTALLED IN AN AREA THAT THE ASSOCIATION IS REQUIRED TO MAINTAIN OR IRRIGATE. IF AN ASSOCIATION PROHIBITS NEW INSTALLATION OF NATURAL GRASS ON A MEMBER'S PROPERTY, THE ASSOCIATION MAY ALSO PROHIBIT NEW INSTALLATION OF ARTIFICIAL TURF ON A MEMBER'S PROPERTY, EXCEPT THAT, IN THAT INSTANCE, AN ASSOCIATION MAY NOT PROHIBIT A MEMBER FROM CONVERTING NATURAL GRASS TO ARTIFICIAL TURF ON THE MEMBER'S PROPERTY.

C. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, IN AN ACTION AGAINST THE ASSOCIATION FOR A VIOLATION OF THIS SECTION, THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO ANY PARTY THAT PREVAILS AS DETERMINED BY THE COURT.

D. THIS SECTION DOES NOT:

1. AFFECT AN ASSOCIATION'S RESPONSIBILITY TO CARRY OUT BOTH THE EXPRESS AND THE REASONABLY IMPLIED INTENT OF A DECLARATION THAT PROVIDES THAT THE DESIGN STANDARDS OF THE PLANNED COMMUNITY ARE REQUIRED TO BE FOLLOWED TO PROTECT THE NATURAL ENVIRONMENT IN WHICH THE PLANNED COMMUNITY IS DEVELOPED.

2. APPLY TO A PLANNED COMMUNITY THAT HAS UNIQUE VEGETATION AND GEOLOGIC CHARACTERISTICS THAT REQUIRE PRESERVATION BY THE ASSOCIATION AND IN WHICH THE VIABILITY OF THOSE CHARACTERISTICS IS PROTECTED, SUPPORTED AND ENHANCED AS A RESULT OF THE CONTINUED EXISTENCE OF NATURAL LANDSCAPING MATERIALS.

APPROVED BY THE GOVERNOR MARCH 30, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 30, 2022.

ADDENDUM C: H.B. 2158

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House Engrossed

homeowners' associations; political; community activity

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2158

AN ACT

AMENDING SECTIONS 33-1261 AND 33-1808, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 33-1261, Arizona Revised Statutes, is amended to read:

33-1261. Flag display; for sale, rent or lease signs; political signs; political and community activities; applicability; definitions

A. Notwithstanding any provision in the condominium documents, an association shall not prohibit the outdoor display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by a unit owner on that unit owner's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles but shall not prohibit ~~the installation of~~ INSTALLING a flagpole.

C. Notwithstanding any provision in the condominium documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by a unit owner on that owner's property in any combination, including a sign that indicates the unit owner is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign and an association may prohibit ~~the use of~~ USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the condominium, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a unit owner's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the condominium, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common elements of the condominium.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a unit or units. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches and on or in the unit owner's property. If rental or leasing of a unit is allowed, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

D. Notwithstanding any provision in the condominium documents, an association shall not prohibit door-to-door political activity, including solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit ~~the circulation of~~ CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit door-to-door political activity regarding candidates or ballot issues from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

E. Notwithstanding any provision in the condominium documents, an association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign on that unit owner's property, including any limited common elements for that unit that are doors, walls or patios or other limited common elements that touch the unit, other than the roof. An association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

F. An association may regulate the size and number of political signs that may be placed in the common element ground, on a unit owner's property or on a limited common element for that unit if the association's regulation is not more restrictive than any applicable city, town or

county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a unit owner's property shall not exceed nine square feet. An association shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

G. An association shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

H. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT THE INDOOR OR OUTDOOR DISPLAY OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN BY A UNIT OWNER BY PLACEMENT OF A SIGN ON THAT UNIT OWNER'S PROPERTY, INCLUDING ANY LIMITED COMMON ELEMENTS FOR THAT UNIT THAT ARE DOORS, WALLS OR PATIOS OR OTHER LIMITED COMMON ELEMENTS THAT TOUCH THE UNIT, OTHER THAN THE ROOF. AN ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE PLACEMENT, LOCATION AND MANNER OF DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS, EXCEPT AN ASSOCIATION SHALL NOT DO ANY OF THE FOLLOWING:

1. PROHIBIT THE DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS BETWEEN THE DATE THAT THE ASSOCIATION PROVIDES WRITTEN OR ABSENTEE BALLOTS TO UNIT OWNERS AND THREE DAYS AFTER THE CONDOMINIUM ELECTION.

2. LIMIT THE NUMBER OF ASSOCIATION-SPECIFIC SIGNS, EXCEPT THAT THE ASSOCIATION MAY LIMIT THE AGGREGATE TOTAL DIMENSIONS OF ALL ASSOCIATION-SPECIFIC SIGNS ON A UNIT OWNER'S PROPERTY TO NOT MORE THAN NINE SQUARE FEET.

3. REQUIRE ASSOCIATION-SPECIFIC POLITICAL SIGNS TO BE COMMERCIALLY PRODUCED OR PROFESSIONALLY MANUFACTURED OR PROHIBIT USING BOTH SIDES OF THE SIGN.

4. REGULATE THE NUMBER OF CANDIDATES SUPPORTED OR OPPOSED OR THE NUMBER OF BOARD MEMBERS SUPPORTED OR OPPOSED IN A RECALL OR THE NUMBER OF BALLOT MEASURES SUPPORTED OR OPPOSED ON AN ASSOCIATION-SPECIFIC POLITICAL SIGN.

5. MAKE ANY OTHER REGULATIONS REGARDING THE CONTENT OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN, EXCEPT THAT THE ASSOCIATION MAY PROHIBIT USING PROFANITY AND DISCRIMINATORY TEXT, IMAGES OR CONTENT BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS OR NATIONAL ORIGIN AS PRESCRIBED BY FEDERAL OR STATE FAIR HOUSING LAWS.

~~H.~~ I. A condominium is not required to comply with subsection D of this section if the condominium restricts vehicular or pedestrian access to the condominium. This section does not require a condominium to make its common elements other than roadways and sidewalks that are normally

open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

J. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT A UNIT OWNER'S ABILITY TO PEACEFULLY ASSEMBLE AND USE COMMON ELEMENTS OF THE CONDOMINIUM IF DONE IN COMPLIANCE WITH REASONABLE RESTRICTIONS FOR THE USE OF THAT PROPERTY ADOPTED BY THE BOARD OF DIRECTORS. AN INDIVIDUAL UNIT OWNER OR GROUP OF UNIT OWNERS MAY ASSEMBLE TO DISCUSS MATTERS RELATED TO THE CONDOMINIUM, INCLUDING BOARD OF DIRECTOR ELECTIONS OR RECALLS, POTENTIAL OR ACTUAL BALLOT ISSUES OR REVISIONS TO THE CONDOMINIUM DOCUMENTS, PROPERTY MAINTENANCE OR SAFETY ISSUES OR ANY OTHER CONDOMINIUM MATTERS. A UNIT OWNER MAY INVITE ONE POLITICAL CANDIDATE OR ONE NON-UNIT OWNER GUEST TO SPEAK TO AN ASSEMBLY OF UNIT OWNERS ABOUT MATTERS RELATED TO THE CONDOMINIUM. THE ASSOCIATION SHALL NOT PROHIBIT A UNIT OWNER FROM POSTING NOTICES REGARDING THOSE ASSEMBLIES OF UNIT OWNERS ON BULLETIN BOARDS LOCATED ON THE COMMON ELEMENTS OR WITHIN COMMON ELEMENT FACILITIES. AN ASSEMBLY OF UNIT OWNERS PRESCRIBED BY THIS SUBSECTION DOES NOT CONSTITUTE AN OFFICIAL UNIT OWNERS' MEETING UNLESS THE MEETING IS NOTICED AND CONVENED AS PRESCRIBED IN THE CONDOMINIUM DOCUMENTS AND THIS CHAPTER.

~~I.~~ K. An association or managing agent that violates subsection C of this section forfeits and extinguishes the lien rights authorized under section 33-1256 against that unit for a period of six consecutive months ~~from~~ AFTER the date of the violation.

~~J.~~ L. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

~~K.~~ M. For the purposes of this section: ~~,~~

1. "ASSOCIATION-SPECIFIC POLITICAL SIGN" MEANS A SIGN THAT SUPPORTS OR OPPOSES A CANDIDATE FOR THE BOARD OF DIRECTORS OR THE RECALL OF A BOARD MEMBER OR A CONDOMINIUM BALLOT MEASURE THAT REQUIRES A VOTE OF THE ASSOCIATION UNIT OWNERS.

2. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

Sec. 2. Section 33-1808, Arizona Revised Statutes, is amended to read:

33-1808. Flag display; political signs; caution signs; for sale, rent or lease signs; political and community activities; definitions

A. Notwithstanding any provision in the community documents, an association shall not prohibit the outdoor front yard or backyard display of any of the following:

1. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard by an

association member on that member's property if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

2. The POW/MIA flag.

3. The Arizona state flag.

4. An Arizona Indian nations flag.

5. The Gadsden flag.

B. The association shall adopt reasonable rules and regulations regarding the placement and manner of display of the American flag, the military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian nations flag. The association rules may regulate the location and size of flagpoles, may limit the member to displaying not more than two flags at once and may limit the height of the flagpole to not more than the height of the rooftop of the member's home but shall not prohibit ~~the installation of~~ INSTALLING a flagpole in the front yard or backyard of the member's property.

C. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a political sign by an association member on that member's property, except that an association may prohibit the display of political signs as follows:

1. Earlier than seventy-one days before the day of a primary election.

2. Later than fifteen days after the day of the general election.

3. For a sign for a candidate in a primary election who does not advance to the general election, later than fifteen days after the primary election.

D. An association may regulate the size and number of political signs that may be placed on a member's property if the association's regulation is not more restrictive than any applicable city, town or county ordinance that regulates the size and number of political signs on residential property. If the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine square feet.

E. Notwithstanding any provision in the community documents, an association shall not prohibit ~~the use of~~ USING cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.

2. The signs are removed within one hour of children ceasing to play.

3. The signs are displayed only when children are actually present within fifty feet of the sign.

4. The temporary signs are not taller than three feet in height.

5. The signs are professionally manufactured or produced.

F. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

G. Notwithstanding any provision in the community documents, an association shall not prohibit or charge a fee for the use of, the placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale, for rent or for lease shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches. This subsection applies only to a commercially produced sign, and an association may prohibit ~~the use of~~ USING signs that are not commercially produced. With respect to real estate for sale, for rent or for lease in the planned community, an association shall not prohibit in any way other than as is specifically authorized by this section or otherwise regulate any of the following:

1. Temporary open house signs or a member's for sale sign. The association shall not require the use of particular signs indicating an open house or real property for sale and may not further regulate the use of temporary open house or for sale signs that are industry standard size and that are owned or used by the seller or the seller's agent.

2. Open house hours. The association may not limit the hours for an open house for real estate that is for sale in the planned community, except that the association may prohibit an open house being held before 8:00 a.m. or after 6:00 p.m. and may prohibit open house signs on the common areas of the planned community.

3. An owner's or an owner's agent's for rent or for lease sign unless an association's documents prohibit or restrict leasing of a member's property. An association shall not further regulate a for rent or for lease sign or require the use of a particular for rent or for lease sign other than the for rent or for lease sign shall not be any larger than the industry standard size sign of eighteen by twenty-four inches on or in the member's property. If rental or leasing of a member's property is not prohibited or restricted, the association may prohibit an open house for rental or leasing being held before 8:00 a.m. or after 6:00 p.m.

H. Notwithstanding any provision in the community documents, an association shall not prohibit door-to-door political activity, including

solicitations of support or opposition regarding candidates or ballot issues, and shall not prohibit ~~the circulation of~~ CIRCULATING political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property normally open to visitors within the association, except that an association may do the following:

1. Restrict or prohibit the door-to-door political activity from sunset to sunrise.

2. Require the prominent display of an identification tag for each person engaged in the activity, along with the prominent identification of the candidate or ballot issue that is the subject of the support or opposition.

I. A planned community shall not make any regulations regarding the number of candidates supported, the number of public officers supported or opposed in a recall or the number of propositions supported or opposed on a political sign.

J. A planned community shall not require political signs to be commercially produced or professionally manufactured or prohibit the utilization of both sides of a political sign.

K. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT THE INDOOR OR OUTDOOR DISPLAY OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN BY A MEMBER BY PLACEMENT OF A SIGN ON THAT MEMBER'S PROPERTY. AN ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE PLACEMENT, LOCATION AND MANNER OF DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS, EXCEPT AN ASSOCIATION SHALL NOT DO ANY OF THE FOLLOWING:

1. PROHIBIT THE DISPLAY OF ASSOCIATION-SPECIFIC POLITICAL SIGNS BETWEEN THE DATE THAT THE ASSOCIATION PROVIDES WRITTEN OR ABSENTEE BALLOTS TO MEMBERS AND THREE DAYS AFTER THE PLANNED COMMUNITY ELECTION.

2. LIMIT THE NUMBER OF ASSOCIATION-SPECIFIC SIGNS, EXCEPT THAT THE ASSOCIATION MAY LIMIT THE AGGREGATE TOTAL DIMENSIONS OF ALL ASSOCIATION-SPECIFIC SIGNS ON A MEMBER'S PROPERTY TO NOT MORE THAN NINE SQUARE FEET.

3. REQUIRE ASSOCIATION-SPECIFIC POLITICAL SIGNS TO BE COMMERCIALLY PRODUCED OR PROFESSIONALLY MANUFACTURED OR PROHIBIT USING BOTH SIDES OF THE SIGN.

4. REGULATE THE NUMBER OF CANDIDATES SUPPORTED OR OPPOSED OR THE NUMBER OF BOARD MEMBERS SUPPORTED OR OPPOSED IN A RECALL OR THE NUMBER OF BALLOT MEASURES SUPPORTED OR OPPOSED ON AN ASSOCIATION-SPECIFIC POLITICAL SIGN.

5. MAKE ANY OTHER REGULATIONS REGARDING THE CONTENT OF AN ASSOCIATION-SPECIFIC POLITICAL SIGN EXCEPT THAT THE ASSOCIATION MAY PROHIBIT USING PROFANITY AND DISCRIMINATORY TEXT, IMAGES OR CONTENT BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL STATUS OR NATIONAL ORIGIN AS PRESCRIBED BY FEDERAL OR STATE FAIR HOUSING LAWS.

~~K.~~ L. A planned community is not required to comply with subsection H OF THIS SECTION if the planned community restricts vehicular or pedestrian access to the planned community. This section does not require a planned community to make its common elements other than roadways and sidewalks that are normally open to visitors available for the circulation of political petitions to anyone who is not an owner or resident of the community.

M. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, AN ASSOCIATION MAY NOT PROHIBIT OR UNREASONABLY RESTRICT A MEMBER'S ABILITY TO PEACEFULLY ASSEMBLE AND USE COMMON AREAS OF THE PLANNED COMMUNITY IF DONE IN COMPLIANCE WITH REASONABLE RESTRICTIONS FOR THE USE OF THAT PROPERTY ADOPTED BY THE BOARD OF DIRECTORS. AN INDIVIDUAL MEMBER OR GROUP OF MEMBERS MAY ASSEMBLE TO DISCUSS MATTERS RELATED TO THE PLANNED COMMUNITY, INCLUDING BOARD ELECTIONS OR RECALLS, POTENTIAL OR ACTUAL BALLOT ISSUES OR REVISIONS TO THE COMMUNITY DOCUMENTS, PROPERTY MAINTENANCE OR SAFETY ISSUES OR ANY OTHER PLANNED COMMUNITY MATTERS. A MEMBER MAY INVITE ONE POLITICAL CANDIDATE OR ONE NON-MEMBER GUEST TO SPEAK TO AN ASSEMBLY OF MEMBERS ABOUT MATTERS RELATED TO THE COMMUNITY. THE ASSOCIATION SHALL NOT PROHIBIT A MEMBER FROM POSTING NOTICES REGARDING THOSE ASSEMBLIES OF MEMBERS ON BULLETIN BOARDS LOCATED ON THE COMMON AREAS OR WITHIN COMMON AREA FACILITIES. AN ASSEMBLY OF MEMBERS PRESCRIBED BY THIS SUBSECTION DOES NOT CONSTITUTE AN OFFICIAL MEMBERS' MEETING UNLESS THE MEETING IS NOTICED AND CONVENED AS PRESCRIBED IN THE COMMUNITY DOCUMENTS AND THIS CHAPTER.

~~L.~~ N. An association or managing agent that violates subsection G of this section forfeits and extinguishes the lien rights authorized under section 33-1807 against that member's property for a period of six consecutive months ~~from~~ AFTER the date of the violation.

~~M.~~ O. For the purposes of this section: ~~,~~

1. "ASSOCIATION-SPECIFIC POLITICAL SIGN" MEANS A SIGN THAT SUPPORTS OR OPPOSES A CANDIDATE FOR THE BOARD OF DIRECTORS OR THE RECALL OF A BOARD MEMBER OR A PLANNED COMMUNITY BALLOT MEASURE THAT REQUIRES A VOTE OF THE ASSOCIATION MEMBERS.

2. "Political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

ADDENDUM D

Kalway v. Calabria Ranch HOA, LLC, No. CV-20-0152-PR (Ariz. 2022)

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IN THE

SUPREME COURT OF THE STATE OF ARIZONA

MAARTEN KALWAY, A MARRIED MAN DEALING WITH HIS SOLE AND SEPARATE PROPERTY,
Plaintiff/Appellant,

v.

CALABRIA RANCH HOA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY; MARK A. REID AND FLORENCE J. CLARK, HUSBAND AND WIFE; EDWARD A. PHLAUM AND DIANE LYN PHLAUM, HUSBAND AND WIFE AND AS CO-TRUSTEES OF THE EDWARD A. AND DIANE LYN PHLAUM REVOCABLE TRUST, DATED APRIL 10, 2017; AND STUART J. SCIBETTA, AN UNMARRIED MAN AND AS TRUSTEE OF THE STUART J. SCIBETTA LIVING TRUST DATED APRIL 1, 2015,
Defendants/Appellees.

No. CV-20-0152-PR
Filed March 22, 2022

Appeal from the Superior Court in Pima County
The Honorable Janet C. Bostick, Judge
No. C20181284
REVERSED IN PART AND REMANDED

Memorandum Decision of the Court of Appeals, Division Two
No. 2 CA-CV 2019-0106
Filed March 13, 2020
VACATED

COUNSEL:

Gerard R. O'Meara, Charles W. Wirken (argued), Gust Rosenfeld P.L.C., Phoenix, Attorneys for Maarten Kalway

Craig L. Cline (argued), Thompson Krone P.L.C., Tucson, Attorneys for Calabria Ranch HOA LLC, Mark A. Reid, Florence J. Clark, Edward A., and Diane Lyn Phlaum, The Edward A. and Diane Lyn Phlaum Revocable Trust, Dated April 10, 2017, Stuart J. Scibetta, and The Stuart J. Scibetta

Living Trust Dated April 1, 2015

CHIEF JUSTICE BRUTINEL authored the opinion of the Court, in which VICE CHIEF JUSTICE TIMMER and JUSTICES BOLICK, LOPEZ, BEENE, and MONTGOMERY joined.*

CHIEF JUSTICE BRUTINEL, opinion of the Court:

¶1 In this case, we are asked to decide the extent to which a homeowners' association ("HOA") may rely on a general-amendment-power provision in its covenants, conditions, and restrictions ("CC&Rs") to place restrictions on landowners' use of their land. Although CC&Rs are generally enforced as written, we interpret such restrictions to reflect the reasonable expectations of the affected homeowners. Construing such provisions narrowly, as with any restrictive covenant on real property, we hold that a general-amendment-power provision may be used to amend only those restrictions for which the HOA's original declaration has provided sufficient notice.

I. BACKGROUND

¶2 Calabria Ranch Estates is a residential subdivision comprised of five lots located east of Tucson. Maarten Kalway owns Lot 2, which at nearly twenty-three acres is the largest of the lots. The remaining lots range from 3.3 to 6.6 acres.[1] The lots are subject to CC&Rs, first recorded in the original declaration in 2015, to "protect[] the value, desirability, attractiveness and natural character of the Property," as stated in the CC&Rs' general-purpose statement.

¶3 According to the original declaration, the CC&Rs could be amended "at any time by an instrument executed and acknowledged by the [m]ajority [v]ote of the owners" under the general-amendment-power

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* Although Justice Andrew W. Gould (Ret.) participated in the oral argument in this case, he retired before issuance of this opinion and did not take part in its drafting.

[1] Each of the five lots is owned separately except for Lots 4 and 5, which are jointly owned and together comprise 11.65 acres.

provision. A "[m]ajority [v]ote" consists of at least four of the six possible votes. Each lot is entitled to one vote, except Kalway's lot, which has two.

¶4 In January 2018, the other property owners ("Other Owners") amended the CC&Rs by majority vote without Kalway's consent or knowledge. The amendments change some definitions and add others, create new restrictions, and enact new enforcement measures against owners for violating the covenants. The new restrictions include limiting owners' ability to convey or subdivide their lots, restricting the size and number of buildings permitted on each lot, and reducing the maximum number of livestock permitted on each lot.

¶5 Kalway brought this action against Calabria Ranch and the Other Owners, seeking a declaratory judgment to invalidate the amendments to the CC&Rs. The parties filed cross-motions for summary judgment, which the superior court granted in part and denied in part. The court invalidated two sections in their entirety and partially invalidated two more sections of the amended CC&Rs. The court further found the invalid provisions severable from the rest of the CC&Rs.[2]

¶6 Kalway appealed, arguing that all the amendments are invalid without unanimous consent. *Kalway v. Calabria Ranch HOA, LLC*, No. 2 CA-CV 2019-0106, 2020 WL 1239831, at *2 ¶ 8 (Ariz. App. Mar. 13, 2020) (mem. decision). The court of appeals disagreed, affirming in a 2–1 decision. *Id.* at *1 ¶ 1. The court relied on its earlier decision in *Dreamland Villa Community Club, Inc. v. Raimey*, 224 Ariz. 42, 51 ¶ 38 (App. 2010), which required notice in the original declaration that amendments on specific issues could be imposed non-consensually. *Kalway*, 2020 WL 1239831, at *3–4 ¶¶ 12–13. Applying *Dreamland*, the court concluded Kalway acquired his lot with notice that the CC&Rs could be amended by majority vote and that the general-purpose statement in the original declaration was sufficient to provide notice of the amendments. *Id.* at *4 ¶¶ 14–16. Judge Brearcliffe,

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[2] The stricken amendments would have restricted owners' rights to subdivide larger lots into smaller ones and convey them without majority consent (§ 3.10); imposed minimum dwelling and lot sizes (§§ 3.10(c), (f)); permitted a manager to collect "quasi-punitive" fees if required to undertake special maintenance or enforcement duties (§ 4.2 ¶ 2); and authorized compliance and enforcement provisions to address violations (§§ 5.2, 5.3). No party challenged the trial court's ruling striking these provisions.

concurring in part and dissenting in part, argued that the majority's reliance on each amendment's harmony with the general-purpose statement of the original declaration would permit "a gauzy statement of purpose" to justify any new amendment, thereby rendering *Dreamland*'s notice requirement "a nullity." *Id.* at *10 ¶ 39 (Brearcliffe, J., concurring in part and dissenting in part).

¶7 We granted review because the petition raises issues of statewide importance regarding the scope of an HOA's authority to amend CC&Rs. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

II. DISCUSSION

¶8 Initially, we consider whether the original declaration must provide notice of prospective amendments. If an amendment is invalid, we "blue pencil" the amended CC&Rs, striking severable provisions. *Valley Med. Specialists v. Farber*, 194 Ariz. 363, 372 ¶ 30 (1999) ("Arizona courts will 'blue pencil' restrictive covenants, eliminating grammatically severable, unreasonable provisions.").

A. Standard of Review

¶9 We review questions of law, including the interpretation of CC&Rs and the grant of summary judgment, de novo. *Powell v. Washburn*, 211 Ariz. 553, 555–56 ¶ 8 (2006); *Glazer v. State*, 237 Ariz. 160, 167 ¶ 29 (2015). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a).

B. Notice Requirement

¶10 Arizona law permits the amendment of CC&Rs by a majority vote if such voting scheme is specified in the original declaration. A.R.S. § 33-1817(A). But § 33-1817(A) does not displace the common law, which prohibits some amendments even if passed by a majority vote. The original declaration must give sufficient notice of the possibility of a future amendment; that is, amendments must be reasonable and foreseeable. *See Dreamland*, 224 Ariz. at 51 ¶ 38; *see also Shamrock v. Wagon Wheel Park Homeowners Ass'n*, 206 Ariz. 42, 45–46 ¶ 14 (App. 2003); *Wilson v. Playa de Serrano*, 211 Ariz. 511, 513 ¶ 7 (App. 2005).

¶11 In defining the contours of reasonableness and foreseeability, we find *Dreamland*'s reasoning compelling. The homeowners in *Dreamland* collectively comprised Dreamland Villa, a residential community with eighteen sections. *Dreamland*, 224 Ariz. at 43 ¶ 2. Dreamland Villa Community Club, Inc. ("DVCC") was "a nonprofit corporation by volunteer members to provide recreational facilities to those who joined the club." *Id.* ¶ 3. Membership in the DVCC was voluntary and carried a membership fee. *Id.* at 48 ¶ 23.

¶12 Each of the eighteen Dreamland Villa sections had its own respective set of CC&Rs. *Id.* at 43 ¶ 4. For all but one of the sections' original declarations, there was no mention of DVCC.[3] *Id.* And each of the original declarations, like the original declaration here, contained an "amendment by majority vote" provision. *Id.* at 43–44 ¶ 4. Under this provision, a majority of the homeowners voted to amend the original declarations to make DVCC membership mandatory and impose annual assessments. *Id.* at 46 ¶ 18. After DVCC brought claims against minority homeowners who failed to pay annual assessments, the minority homeowners challenged the validity of the amendments mandating DVCC membership. *Id.* at 44 ¶¶ 7–9.

¶13 The court of appeals held that the amendments imposing mandatory DVCC membership were not enforceable against the homeowners because the original declarations did not provide "proper notice that such servitudes could be imposed non-consensually under the generic amendment power." *Id.* at 51 ¶ 38. Thus, under *Dreamland*, even a broad grant of authority to amend an original declaration is insufficient to allow a majority of property owners to adopt and enforce restrictions on the minority without notice. *Id.*

¶14 Like *Dreamland*, we hold that an HOA cannot create new affirmative obligations where the original declaration did not provide

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[3] All members paid a membership fee, but section eighteen's original declaration also imposed annual assessments on non-members to fund the club. *Id.* at 43–44 ¶¶ 4–5. The court nonetheless found that "homeowners in section 18 were in the same position with reference to DVCC" as the other homeowners prior to the amendments because, by imposing annual assessment fees on non-members only, section eighteen's original declaration acknowledged that DVCC membership was not mandatory. *Id.* at 47–48 ¶¶ 22–23.

notice to the homeowners that they might be subject to such obligations. CC&Rs form a contract between individual landowners and all the landowners bound by the restrictions, as a whole. *Powell*, 211 Ariz. at 555 ¶ 8; *Playa de Serrano*, 211 Ariz. at 513 ¶ 7. Although contracts are generally enforced as written, *Grubb & Ellis Mgmt. Servs., Inc. v. 407417 B.C., L.L.C.*, 213 Ariz. 83, 86 ¶ 12 (App. 2006), in special types of contracts, we do not enforce "unknown terms which are beyond the range of reasonable expectation," *Darner Motor Sales, Inc. v. Universal Underwriters Ins.*, 140 Ariz. 383, 391 (1984) (quoting Restatement (Second) of Contracts § 211 cmt. f (Am. L. Inst. 1981)). CC&Rs are such contracts.

¶15 The notice requirement relies on a homeowner's reasonable expectations based on the declaration in effect at the time of purchase—in this case, the original declaration. Under general contract law principles, a majority could impose any new restrictions on the minority because the original declaration provided for amendments by majority vote. But allowing substantial, unforeseen, and unlimited amendments would alter the nature of the covenants to which the homeowners originally agreed. *See Dreamland*, 224 Ariz. at 51 ¶ 38. Thus, "[t]he law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes to existing covenants." *Boyles v. Hausmann*, 517 N.W.2d 610, 617 (Neb. 1994).

¶16 To determine whether the original declaration gave sufficient notice of a future amendment, we must look to the original declaration itself. "Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the original intent of the parties" with any doubts resolved against the validity of a restriction. *Armstrong v. Ledges Homeowners Ass'n*, 633 S.E.2d 78, 85 (N.C. 2006) (emphasis omitted). We apply an objective inquiry to determine whether a restriction gave notice of the amendments at issue. *See* 1 *Williston on Contracts* § 3:4 (4th ed. 2021) ("Whether there is mutual assent to the terms of a contract is determined by an objective test, rather than the subjective intentions of the parties.").

¶17 The restriction itself does not have to necessarily give notice of the particular details of a future amendment; that would rarely happen. Instead, it must give notice that a restrictive or affirmative covenant exists and that the covenant can be amended to refine it, correct an error, fill in a

gap, or change it in a particular way. *See Armstrong*, 633 S.E.2d at 87. But future amendments cannot be "entirely new and different in character," untethered to an original covenant. *Lakeland Prop. Owners Ass'n v. Larson*, 459 N.E.2d 1164, 1167 (Ill. App. Ct. 1984). Otherwise, such an amendment would infringe on property owners' expectations of the scope of the covenants.

C. Application to Calabria Ranch's Amendments

¶18 Applying these principles here, very few of the challenged amendments survive. Neither the general-amendment-power provision nor the general-purpose statement is sufficient to provide notice of the challenged amendments. *See id.*

¶19 The original declaration stated: "This Declaration may be amended at any time by an instrument executed and acknowledged by the Majority Vote of the Owners which shall not be effective until the recording of such instrument." Although the plain language of this general-amendment-power provision would permit any amendments by majority vote under traditional contract law, our holding today requires that the original declaration give fair notice of any enacted amendment.

¶20 Similarly, the general-purpose statement in Calabria Ranch's original declaration was simply too broad and subjective to give notice of future amendments. The "purpose" of the CC&Rs, according to the original declaration, was to "protect[] the value, desirability, attractiveness and natural character of the Property." Although Arizona courts construe the language in CC&Rs "in light of the circumstances surrounding its formulation, with the idea of carrying out its object, purpose and intent," *Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 288, 297 ¶ 31 (App. 2011) (quoting *Powell*, 211 Ariz. at 557 ¶ 16), relying solely upon a subjective general statement of purpose would provide limitless justification for new amendments.

¶21 Because the general-amendment-power provision and general-purpose statement were not sufficient to provide notice of future amendments, we next analyze each challenged amendment separately under *Dreamland*. Applying the blue pencil rule, we strike unauthorized terms from several amendments and where we find amendments invalid in their entirety, we strike them and concur with the deletion of the

amendments stricken by the trial court. *See Valley Med. Specialists*, 194 Ariz. at 372 ¶ 30.

1. Section 1.3: Dwelling

¶22 Amended § 1.3 limits "dwellings" to 60% living space and 40% garage. The original declaration provided no limitations on the size of garages or living spaces and only required that all residences be "Single Family Dwellings," without defining the term. Nothing in the original declaration restricting residences to single-family dwellings would put a property owner on notice that the Other Owners could, by majority vote, now limit the size of his residence.

¶23 We revise amended § 1.3 as follows using strikeouts to reflect deletions: "'Dwelling' shall mean a single-family dwelling that is a permanent structure affixed to a Lot and used for residential purposes by a single family. ~~Moreover, a dwelling must have at least 60% living space and at most 40% Garage, as defined below.~~"

2. Section 1.5: Garage

¶24 Although "Garage" was not defined in the original declaration, we find its inclusion permissible because § 3.3 of the original declaration referenced a "garage." Thus, a later amendment defining the term was reasonably foreseeable.

3. Section 1.6: Improvement; Section 3.7: Setbacks

¶25 The amended CC&Rs replace the word "structures" with "Improvements" in the Setbacks provision, § 3.7. Another amendment, § 1.6, defines "Improvement" as "any changes, alterations or additions to a Lot, including any Dwelling, and including but not limited to buildings, outbuildings, patios, swimming pools, driveways, grading, excavation, landscaping, and any structure or other improvement of any kind." Read in conjunction with the amended Setbacks provision, this new definition prevents landowners from digging even one hole within fifty feet of their property line, whereas under the original declaration landowners were prevented only from building a structure. Landowners were not provided notice in the original declaration that restrictions on building structures

could be expanded to restrictions on any improvement whatsoever by majority vote.

¶26 We revise § 1.6 as follows: "'Improvement' shall mean any changes, alterations or additions to a Lot, including any Dwelling, and including but not limited to buildings, outbuildings, patios, swimming pools, ~~driveways, grading, excavation, landscaping,~~ and any structure~~ or other improvement of any kind~~."

¶27 In view of our revisions to § 1.6, we find amended § 3.7 valid.

4. Section 1.13: Votes

¶28 Additions to the "Votes" section are invalid. The original declaration allocated votes per lot but was silent on the effect future subdivision would have on vote allocation. The amended CC&Rs add: "In the event of any potential future subdivision of the Lots, the allocation of Votes shall remain the same with any additional lots or parcels having no Vote under this Declaration." The original declaration did not provide for subdivision. Although the amendment provision provided notice that future amendments could account for subdivision, no notice was provided that future subdivision may result in a loss of voting power for new lot owners, thus potentially lessening the value of these lots.

¶29 We revise § 1.13 to read: "'Votes' shall be allocated as follows: one (1) Vote per Lot, as identified in the attached Survey, with the exception of Lot 2, which shall have two (2) Votes.~~ In the event of any potential future subdivision of the Lots, the allocation of Votes shall remain the same with any additional lots or parcels having no Vote under this Declaration.~~"

5. Section 3.1: Livestock

¶30 As amended, the portion of § 3.1 changing the types and quantity of permissible "livestock" is invalid. The original declaration stated: "No Owner or Occupant shall keep more than six (6) livestock on the Property including, but not limited to, horses/cattle per 3.3 acres." Amended § 3.1 limits livestock to "chickens, horses, and cattle only" and, while retaining the six livestock per 3.3 acres ratio, caps the total number of permitted livestock units at fifteen regardless of the size of the lot.

¶31 The intended definition of "livestock" is unclear. Merriam-Webster defines "livestock" as "animals kept or raised for use or pleasure[;] especially: farm animals kept for use and profit." *Livestock*, Merriam-Webster, https://www.merriam-webster.com/dictionary/livestock (last visited Mar. 14, 2022). This broad definition could include any number of animals of varying sizes, but because of the numerical limitation and the specific mention of horses and cattle, the original declaration appears to have contemplated only large animals. The CC&Rs limited the number of livestock in proportion to the size of the lot, indicating that the size of the lot, and therefore the size of the animals, was a factor in the limitation. In conjunction with the *noscitur a sociis* canon, which instructs us to interpret an unclear word or phrase according to the words immediately surrounding it, *Noscitur a sociis*, Black's Law Dictionary (11th ed. 2019), reasonable landowners might interpret "livestock" to mean only large animals like horses and cattle. Thus, reasonable landowners might believe the original declaration was silent regarding smaller animals, such as chickens. They would find support in Arizona law, which does not consider "poultry" to be "livestock." A.R.S. § 3-1201(5), (7).

¶32 We need not determine exactly which animals were considered "livestock" in the original declaration. Whatever the definition, under the original declaration, livestock was expressly "not limited to" horses and cattle. And reasonable landowners may have believed chickens were *not* livestock under the original declaration, and therefore not subject to the number limitation. An amendment that redefines "livestock" so drastically so that other livestock are prohibited by the amendment is not reasonable or foreseeable. This change unreasonably alters the nature of the original CC&Rs and was not portended by them.

¶33 Furthermore, the amended CC&Rs impose a new limit on livestock. In the original declaration, landowners were allowed six livestock per 3.3 acres. Now, landowners cannot own more than fifteen livestock animals regardless of the size of the lot. Irrespective of the change in number of permitted livestock, the livestock amendment is different in kind from that in the original declaration. The original livestock limitation is proportional to the size of the owners' lots. A landowner would not likely

foresee a numerical cap on lots regardless of acreage, such as that in amended § 3.1.[4]

¶34 Accordingly, we revise § 3.1 as follows: "No Owner or Occupant shall keep more than six (6) livestock animal units per 3.3 acres on their Lot ~~and livestock shall be limited to chickens, horses, and cattle only. In no event shall any Lot contain more than fifteen (15) livestock units~~."

6. Section 3.8: Non-Dwelling Structures

¶35 Newly added § 3.8 is invalid. The original declaration placed no limitation on the location, placement, or size of "non-dwelling structures." But this new section limits non-dwelling structures to 2500 total square feet in area and eighteen feet in height and prohibits them from obstructing any "views" of neighboring lots. Nothing in the original declaration put a reasonable homeowner on notice that his or her neighbors might impose such restrictions. We strike § 3.8 in its entirety.

7. Section 3.9: Improvement Plans

¶36 Newly added § 3.9 is similarly invalid. In addition to defining "Improvement" in § 1.6, the amended CC&Rs create a requirement that any "construction plans" for "Improvements" be submitted to and approved by a majority vote. Given the new definition of "Improvement" in § 1.6, the consequence of § 3.9 is that, whether it is a house, a patio, or other structure, a property owner must now submit construction plans to his or her neighbors for their approval. Nowhere in the original declaration was any such approval process required. Nothing in the original declaration put a reasonable property owner on notice that an otherwise permissible use of his or her property would be subject to approval by a majority vote of his or her neighbors. Because the original declaration did not provide Kalway with notice, and this amendment to the CC&Rs was adopted without his consent, § 3.9 is invalid and stricken in its entirety.

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[4] Kalway further argues that certain amendments are invalid because they affect only his lot. In view of our decision to invalidate this amendment, we do not address this argument.

8. Sections 3.10(b), (d), (e), (g), (h): Subdivision and Improvements

¶37 Challenged subsections 3.10(b), (d), (e), (g), and (h) are invalid and stricken in their entirety. Additionally, the first sentence of the general provision in § 3.10 is invalid and likewise stricken. Section 3.10 prohibits owners from subdividing their own lots without a majority vote of all of Calabria Ranch's property owners, yet no property owner was ever put on notice that such a requirement might be considered in the future.

¶38 Subsection (b) requires the submission of improvement plans to the "Owners and Manager, in writing" at least thirty days before making such improvements. No requirement for submission of improvement plans was contained in or implied by the original declaration.

¶39 Likewise, the original declaration mentioned no limit to the number of non-residential structures on a lot, nor did it control the sequence of their construction—now contemplated in subsections (e) and (d), respectively. In the amended CC&Rs, however, the Other Owners now impose limits on both the number and type of structures on a lot and when such structures may be built. Nothing in the original declaration made any mention of such limitations or mandatory sequencing, and reasonable property owners would not have expected that any such future provisions would be imposed without their consent. It is not uncommon for homeowners to have a number of buildings on their property, such as a guesthouse, greenhouse, shed, or detached garage. Under this amendment, an owner would have to choose only one of the above structures and is prohibited from building beyond that.

¶40 Moreover, nowhere in the original declaration did it mention restrictions on the environmental impact in riparian areas—now contemplated in § 3.10(g)—or the obstruction of views—now regulated in § 3.10(h). The original declaration did not contain any language indicating that such amendments might be adopted in the future.

9. Section 7.2: Fallen Deadwood, Dried Undergrowth, and other Fire Hazards

¶41 Newly added § 7.2 is invalid. Under this new requirement, owners must maintain their properties such that dried undergrowth is less than one-foot high and all fallen deadwood longer than three feet is cut into

six-inch-or-less pieces. As the court of appeals' partial concurrence and dissent noted, while this provision might be advisable to prevent wildfires, no language in the original declaration put property owners on notice that fallen branches on their property would later be regulated by the CC&Rs. *Kalway*, 2020 WL 1239831, at *10 ¶ 38 (Brearcliffe, J., concurring in part and dissenting in part). We strike § 7.2 in its entirety.

III. CONCLUSION

¶42 We reverse the trial court in part and remand for entry of summary judgment in part for Kalway and in part for Calabria Ranch. We vacate the court of appeals' decision and award attorney fees to Kalway in this Court and in the court of appeals.