

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2824

AN ACT

CHANGING THE DESIGNATION OF TITLE 41, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES, TO "ADMINISTRATIVE HEARINGS"; AMENDING SECTIONS 41-2198, 41-2198.01, 41-2198.02, 41-2198.03 AND 41-2198.04, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 16, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2198.05; RELATING TO THE DEPARTMENT OF BUILDING AND FIRE SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Heading change

3 The article heading of title 41, chapter 16, article 5, Arizona Revised
4 Statutes, is changed from "MOBILE HOME PARKS HEARING OFFICER FUNCTION" to
5 "ADMINISTRATIVE HEARINGS".

6 Sec. 2. Section 41-2198, Arizona Revised Statutes, is amended to read:
7 41-2198. Administrative adjudication of complaints

8 PURSUANT TO CHAPTER 6, ARTICLE 10 OF THIS TITLE, an administrative law
9 judge shall adjudicate complaints regarding and ensure compliance with:

10 1. The Arizona mobile home parks residential landlord and tenant act
11 ~~pursuant to title 41, chapter 6, article 10.~~

12 2. TITLE 33, CHAPTER 9 AND CONDOMINIUM DOCUMENTS.

13 3. TITLE 33, CHAPTER 16 AND PLANNED COMMUNITY DOCUMENTS.

14 Sec. 3. Section 41-2198.01, Arizona Revised Statutes, is amended to
15 read:

16 41-2198.01. Hearing; rights and procedures

17 A. A person who is subject to title 33, chapter 11 or a party to a
18 rental agreement entered into pursuant to title 33, chapter 11 may petition
19 the department for a hearing concerning violations of the Arizona mobile home
20 parks residential landlord and tenant act by filing a petition with the
21 department and paying a fifty dollar filing fee. All monies collected shall
22 be deposited in the state general fund and are not refundable.

23 B. FOR A DISPUTE BETWEEN AN OWNER AND A CONDOMINIUM ASSOCIATION OR
24 PLANNED COMMUNITY ASSOCIATION THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER
25 9 OR 16, THE OWNER OR ASSOCIATION MAY PETITION THE DEPARTMENT FOR A HEARING
26 CONCERNING VIOLATIONS OF CONDOMINIUM DOCUMENTS OR PLANNED COMMUNITY DOCUMENTS
27 OR VIOLATIONS OF THE STATUTES THAT REGULATE CONDOMINIUMS OR PLANNED
28 COMMUNITIES. THE PETITIONER SHALL FILE A PETITION WITH THE DEPARTMENT AND
29 PAY A NONREFUNDABLE FILING FEE IN AN AMOUNT TO BE ESTABLISHED BY THE
30 DIRECTOR. THE FILING FEE SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED
31 COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. THE
32 DEPARTMENT DOES NOT HAVE JURISDICTION TO HEAR:

33 1. ANY DISPUTE AMONG OR BETWEEN OWNERS TO WHICH THE ASSOCIATION IS NOT
34 A PARTY.

35 2. ANY DISPUTE IN AN ASSOCIATION THAT PROVIDES AN ARBITRATION PROCESS
36 FOR THE RESOLUTION OF DISPUTES BETWEEN THE OWNERS AND THE ASSOCIATION. FOR
37 ANY ASSOCIATION THAT DOES NOT PROVIDE AN ARBITRATION PROCESS OR FOR ANY
38 ARBITRATION THAT IS NOT COMPLETED WITHIN THIRTY DAYS AFTER RECEIPT OF THE
39 COMPLAINT THAT IS THE SUBJECT OF THE ARBITRATION, THE ADMINISTRATIVE LAW
40 JUDGE MAY HEAR AND ADJUDICATE THE DISPUTE.

41 ~~B-~~ C. The petition shall be in writing on a form approved by the
42 department, shall list the complaints and shall be signed by or on behalf of
43 the persons filing and include their addresses, stating that a hearing is
44 desired, and shall be filed with the department.

1 ~~C.~~ D. On receipt of the petition and the filing fee the department
2 shall mail by certified mail a copy of the petition along with notice to the
3 named respondent that a response is required within ten days of mailing of
4 the petition showing cause, if any, why the petition should be dismissed.

5 ~~D.~~ E. After receiving the response, the director or ~~his~~ THE
6 DIRECTOR'S designee shall promptly review the petition for hearing and, if
7 justified, refer the petition to the office of administrative ~~appeals~~
8 HEARINGS. The director may dismiss a petition for hearing if it appears to
9 ~~his~~ THE DIRECTOR'S satisfaction that the disputed issue or issues have been
10 resolved by the parties.

11 ~~E.~~ F. Failure of the respondent to answer is deemed an admission of
12 the allegations made in the petition, and the ~~administrative law judge may~~
13 ~~proceed with a default hearing~~ DIRECTOR SHALL ISSUE A DEFAULT DECISION.

14 ~~F.~~ G. Informal disposition may be made of any contested case.

15 ~~G.~~ H. Either party or ~~his~~ THE PARTY'S authorized agent may inspect
16 any file of the department that pertains to the hearing, if such
17 authorization is filed in writing with the department.

18 ~~H.~~ I. At a hearing conducted pursuant to this section, a corporation
19 may be represented by a corporate officer or employee who is not a member of
20 the state bar if:

21 1. The corporation has specifically authorized the officer or employee
22 to represent it.

23 2. The representation is not the officer's or employee's primary duty
24 to the corporation but is secondary or incidental to the officer's or
25 employee's duties relating to the management or operation of the corporation.

26 Sec. 4. Section 41-2198.02, Arizona Revised Statutes, is amended to
27 read:

28 41-2198.02. Orders; penalties; disposition

29 A. The administrative law judge may order any party to abide by the
30 statute, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS or contract provision at
31 issue and may levy a civil penalty on the basis of each violation. All
32 monies collected pursuant to this article shall be deposited in the state
33 general fund to be used to offset the cost of administering the
34 administrative law judge function, EXCEPT THAT MONIES COLLECTED FROM DISPUTES
35 INVOLVING CONDOMINIUMS OR PLANNED COMMUNITIES AS PRESCRIBED IN SECTION
36 41-2198.01, SUBSECTION B SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED
37 COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. If the
38 petitioner prevails, the administrative law judge shall order the respondent
39 to pay to the petitioner the filing fee required by section 41-2198.01.

40 B. The order issued by the administrative law judge is binding on the
41 parties unless a rehearing is granted pursuant to section 41-2198.04 based on
42 a petition setting forth the reasons for the request for rehearing, in which
43 case the order issued at the conclusion of the rehearing is binding on the
44 parties. NOTWITHSTANDING SECTIONS 41-1092.08 AND 41-1092.09, AN ORDER ISSUED
45 BY THE ADMINISTRATIVE LAW JUDGE IN AN ACTION REGARDING A CONDOMINIUM OR

1 PLANNED COMMUNITY IS FINAL AND IS NOT SUBJECT TO A REQUEST FOR
2 REHEARING. The order issued by the administrative law judge is enforceable
3 through contempt of court proceedings.

4 Sec. 5. Section 41-2198.03, Arizona Revised Statutes, is amended to
5 read:

6 41-2198.03. Scope of hearing

7 A. The administrative law judge may hear and adjudicate THE FOLLOWING:

8 1. All matters relating to the Arizona mobile home parks residential
9 landlord and tenant act and rules adopted pursuant to this article, except
10 that the administrative law judge shall not hear matters pertaining to rental
11 increases pursuant to section 33-1413, subsection G or I. ~~and does not have~~
12 ~~the authority to impose civil penalties.~~

13 2. FOR ANY CONDOMINIUM ASSOCIATION THAT DOES NOT PROVIDE AN
14 ARBITRATION PROCESS FOR THE RESOLUTION OF DISPUTES BETWEEN THE UNIT OWNERS
15 AND THE ASSOCIATION OR FOR ANY ARBITRATION THAT IS NOT COMPLETED WITHIN
16 THIRTY DAYS AFTER RECEIPT OF THE COMPLAINT THAT IS THE SUBJECT OF THE
17 ARBITRATION, DISPUTES AS PRESCRIBED IN THIS ARTICLE.

18 3. FOR ANY PLANNED COMMUNITY ASSOCIATION THAT DOES NOT PROVIDE AN
19 ARBITRATION PROCESS FOR THE RESOLUTION OF DISPUTES BETWEEN THE MEMBERS AND
20 THE ASSOCIATION OR FOR ANY ARBITRATION THAT IS NOT COMPLETED WITHIN THIRTY
21 DAYS AFTER RECEIPT OF THE COMPLAINT THAT IS THE SUBJECT OF THE ARBITRATION,
22 DISPUTES AS PRESCRIBED IN THIS ARTICLE.

23 B. This section shall not be construed to limit the jurisdiction of
24 the courts of this state to hear and decide matters pursuant to the Arizona
25 mobile home parks residential landlord and tenant act, THE STATUTES OR
26 CONDOMINIUM DOCUMENTS THAT REGULATE CONDOMINIUMS OR THE STATUTES OR COMMUNITY
27 DOCUMENTS THAT REGULATE PLANNED COMMUNITIES.

28 Sec. 6. Section 41-2198.04, Arizona Revised Statutes, is amended to
29 read:

30 41-2198.04. Rehearing; appeal

31 A. EXCEPT FOR AN ACTION RELATING TO CONDOMINIUM DOCUMENTS OR PLANNED
32 COMMUNITY DOCUMENTS OR THE STATUTES REGULATING CONDOMINIUMS OR PLANNED
33 COMMUNITIES, a person aggrieved by a decision of the administrative law judge
34 may apply for a rehearing by filing with the director a petition in writing
35 pursuant to section 41-1092.09. Within ten days after filing such petition,
36 the director shall serve notice of the request on the other party by mailing
37 a copy of the petition in the manner prescribed in section 41-2198.01 for
38 notice of hearing.

39 B. The filing of a petition for rehearing temporarily suspends the
40 operation of the administrative law judge's action. If the petition is
41 granted, the administrative law judge's action is suspended pending the
42 decision on the rehearing.

43 C. In the order granting or denying a rehearing, the director shall
44 include a statement of the particular grounds and reasons for the director's
45 action on the petition and shall promptly mail a copy of the order to the

1 parties who have appeared in support of or in opposition to the petition for
2 rehearing.

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

6 1. The corporation has specifically authorized such officer or
7 employee to represent it.

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

11 Sec. 7. Title 41, chapter 16, article 5, Arizona Revised Statutes, is
12 amended by adding section 41-2198.05, to read:

13 41-2198.05. Condominium and planned community hearing office
14 fund

15 A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS
16 ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE DIRECTOR. MONIES IN
17 THE FUND ARE CONTINUOUSLY APPROPRIATED. ON NOTICE FROM THE DIRECTOR, THE
18 STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY
19 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
20 FUND.

21 B. MONIES IN THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND
22 SHALL BE USED TO REIMBURSE THE ACTUAL COSTS OF THE OFFICE OF ADMINISTRATIVE
23 HEARINGS IN CONDUCTING HEARINGS PURSUANT TO SECTION 41-2198.01, SUBSECTION B,
24 MONIES REMAINING IN THE FUND MAY BE USED BY THE DEPARTMENT TO OFFSET THE
25 COSTS OF ADMINISTERING CASES FILED PURSUANT TO SECTION 41-2198.01,
26 SUBSECTION B.

27 Sec. 8. Joint legislative budget committee review: condominium
28 and planned community fees

29 On or before December 1, 2007, the joint legislative budget committee
30 shall review and make recommendations to the legislature regarding the filing
31 fees charged to parties filing for an administrative hearing pursuant to
32 section 41-2198.01, subsection B, Arizona Revised Statutes, as amended by
33 this act, regarding condominiums and planned communities. The joint
34 legislative budget committee shall recommend a level of filing fee
35 appropriate to ensure the hearing officer program is fiscally sound and
36 self-supporting.