

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 HOMEOWNERS' ASSOCIATIONS.

(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~~ NONREFUNDABLE filing fee IN AN AMOUNT TO
22 BE ESTABLISHED BY THE DIRECTOR. All monies collected shall be deposited in
23 the state general fund and are not refundable.

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

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

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

43 3. ANY DISPUTE THAT ARISES DURING THE PERIOD OF DECLARANT CONTROL AS
44 DEFINED IN SECTIONS 33-1250 AND 33-1812.

1 4. ANY DISPUTE BETWEEN AN OWNER AND ANY PERSON, FIRM, PARTNERSHIP,
2 CORPORATION, ASSOCIATION OR OTHER ORGANIZATION THAT IS ENGAGED IN THE
3 BUSINESS OF DESIGNING, CONSTRUCTING OR SELLING A CONDOMINIUM AS DEFINED IN
4 SECTION 33-1202 OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED COMMUNITY AS
5 DEFINED IN SECTION 33-1802, INCLUDING ANY PERSON, FIRM, PARTNERSHIP,
6 CORPORATION, ASSOCIATION OR OTHER ORGANIZATION LICENSED PURSUANT TO TITLE 32,
7 CHAPTER 20, ARISING OUT OF OR RELATED TO THE DESIGN, CONSTRUCTION, CONDITION
8 OR SALE OF THE CONDOMINIUM OR ANY PROPERTY OR IMPROVEMENTS WITHIN A PLANNED
9 COMMUNITY.

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

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

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

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

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

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

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

35 1. The corporation has specifically authorized the officer ~~or~~,
36 employee OR CONTRACTOR OF THE CORPORATION to represent it.

37 2. The representation is not the officer's ~~or~~, employee's OR
38 CONTRACTOR OF THE CORPORATION'S primary duty to the corporation but is
39 secondary or incidental to the officer's or employee's duties relating to the
40 management or operation of the corporation.

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

43 41-2198.02. Orders; penalties; disposition

44 A. The administrative law judge may order any party to abide by the
45 statute, CONDOMINIUM DOCUMENTS, COMMUNITY DOCUMENTS or contract provision at

1 issue and may levy a civil penalty on the basis of each violation. FOR
2 PURPOSES OF ACTIONS BROUGHT UNDER THE ARIZONA MOBILE HOME PARKS RESIDENTIAL
3 LANDLORD AND TENANT ACT, THE CIVIL PENALTY SHALL NOT EXCEED FIVE HUNDRED
4 DOLLARS. All monies collected pursuant to this article shall be deposited in
5 the state general fund to be used to offset the cost of administering the
6 administrative law judge function, EXCEPT THAT MONIES COLLECTED FROM DISPUTES
7 INVOLVING CONDOMINIUMS OR PLANNED COMMUNITIES AS PRESCRIBED IN SECTION
8 41-2198.01, SUBSECTION B SHALL BE DEPOSITED IN THE CONDOMINIUM AND PLANNED
9 COMMUNITY HEARING OFFICE FUND ESTABLISHED BY SECTION 41-2198.05. If the
10 petitioner prevails, the administrative law judge shall order the respondent
11 to pay to the petitioner the filing fee required by section 41-2198.01.

12 B. The order issued by the administrative law judge is binding on the
13 parties unless a rehearing is granted pursuant to section 41-2198.04 based on
14 a petition setting forth the reasons for the request for rehearing, in which
15 case the order issued at the conclusion of the rehearing is binding on the
16 parties. NOTWITHSTANDING SECTIONS 41-1092.08, SUBSECTION B AND 41-1092.09,
17 AN ORDER ISSUED BY THE ADMINISTRATIVE LAW JUDGE IN AN ACTION REGARDING A
18 CONDOMINIUM OR PLANNED COMMUNITY IS THE FINAL ADMINISTRATIVE DECISION AND IS
19 NOT SUBJECT TO A REQUEST FOR REHEARING. The order issued by the
20 administrative law judge is enforceable through contempt of court
21 proceedings.

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

24 41-2198.03. Scope of hearing

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

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

31 2. FOR ANY CONDOMINIUM ASSOCIATION THAT DOES NOT PROVIDE AN
32 ARBITRATION OR MEDIATION PROCESS FOR THE RESOLUTION OF DISPUTES BETWEEN THE
33 UNIT OWNERS AND THE ASSOCIATION OR FOR ANY ARBITRATION OR MEDIATION THAT IS
34 NOT COMPLETED WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE COMPLAINT THAT IS
35 THE SUBJECT OF THE ARBITRATION OR MEDIATION, DISPUTES AS PRESCRIBED IN THIS
36 ARTICLE.

37 3. FOR ANY PLANNED COMMUNITY ASSOCIATION THAT DOES NOT PROVIDE AN
38 ARBITRATION OR MEDIATION PROCESS FOR THE RESOLUTION OF DISPUTES BETWEEN THE
39 MEMBERS AND THE ASSOCIATION OR FOR ANY ARBITRATION OR MEDIATION THAT IS NOT
40 COMPLETED WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE COMPLAINT THAT IS THE
41 SUBJECT OF THE ARBITRATION OR MEDIATION, DISPUTES AS PRESCRIBED IN THIS
42 ARTICLE.

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

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

8 41-2198.04. Rehearing; appeal

9 A. EXCEPT FOR AN ACTION RELATING TO CONDOMINIUM DOCUMENTS OR PLANNED
10 COMMUNITY DOCUMENTS OR THE STATUTES REGULATING CONDOMINIUMS OR PLANNED
11 COMMUNITIES, a person aggrieved by a decision of the administrative law judge
12 may apply for a rehearing by filing with the director a petition in writing
13 pursuant to section 41-1092.09. Within ten days after filing such petition,
14 the director shall serve notice of the request on the other party by mailing
15 a copy of the petition in the manner prescribed in section 41-2198.01 for
16 notice of hearing.

17 B. The filing of a petition for rehearing temporarily suspends the
18 operation of the administrative law judge's action. If the petition is
19 granted, the administrative law judge's action is suspended pending the
20 decision on the rehearing.

21 C. In the order granting or denying a rehearing, the director shall
22 include a statement of the particular grounds and reasons for the director's
23 action on the petition and shall promptly mail a copy of the order to the
24 parties who have appeared in support of or in opposition to the petition for
25 rehearing.

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

29 1. The corporation has specifically authorized such officer or
30 employee to represent it.

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

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

36 41-2198.05. Condominium and planned community hearing office
37 fund

38 A. THE CONDOMINIUM AND PLANNED COMMUNITY HEARING OFFICE FUND IS
39 ESTABLISHED IN THE DEPARTMENT TO BE ADMINISTERED BY THE DIRECTOR. MONIES IN
40 THE FUND ARE CONTINUOUSLY APPROPRIATED. ON NOTICE FROM THE DIRECTOR, THE
41 STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY
42 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
43 FUND.

