

# The Kinney Komment

News, Updates & Information from Kinney Management Services

Summer 2004



## FROM THE PRESIDENT...

BY TRISH KINNEY

### Letter From the President

The dog days of summer are upon us now and it makes you wonder why the Valley's landscapers don't head for the hills! Of course, we will be jealous in a few months when they *get* to spend the day outside while most of us are stuck at our desks.

Inside this edition you will find a summary of the new laws enacted by the legislature relating to homeowner associations. There is a lot to digest but hopefully the condensed version will be a good place to start. Your manager will be discussing the practical application of the changes with you in more detail.

I have been reflecting on how the Valley's homeowner association industry has changed in the past twenty years. Back in the mid-eighties, new communities featuring associations were selected by a particular type of buyer who valued the benefits offered by this relatively new lifestyle. Now it is quite rare to be able to select a new home in a community that does *not* require membership in a homeowner association. Because associations may be taken for granted in today's market, and somewhat ignored in the sales process, a new member may get off on the wrong foot if he does not carefully educate himself as to the responsibilities of living in an association in advance of his purchase.

For the past sixteen years, I have enjoyed a parallel career as a documentary filmmaker and have produced and directed four films. It occurred to me that in today's world, people get most of their information from the media including television, the internet and movies. So I wondered if maybe a "video welcome package" for new association members might be a more visual, positive and user friendly way to educate and inspire homeowners to become productive and compliant members of their community. A large East Valley Master Planned Community agreed and our video production arm was commissioned to produce such a video for its current membership of almost three thousand and the remaining thirty-six hundred members to follow. Several other communities in development have also contracted for an association informational video in their welcome packages beginning with the first sale to an association member. In the works now is a more "generic" video appropriate for most small to mid-size communities that will accomplish the same goal for a much smaller cost. We look forward to discussing whether your community would benefit from this affordable unique association introduction.

Also in the works is the ability for homeowners to pay assessments using credit cards on-line through Bank One. There will be a service charge for each such transaction to the homeowner but it will provide yet one more way to accommodate assessment payments and reduce delinquencies.

It has been my pleasure for the past several years to serve as President of Operation Freedom Bird, a non-profit Arizona organization that takes 50 Vietnam combat veterans to the Wall each year on Veteran's Day. Please check out our website at [www.operationfreedombird.com](http://www.operationfreedombird.com) to learn more about the program. I was honored to be asked to screen my Vietnam film, *Home of the Brave*, in May at the beautiful New Jersey Vietnam Memorial Education Center. It aired twice on PBS and was seen in the Valley on KAET, Channel 8.

Finally, the daughter of one of our KMS managed community Board members is being treated for leukemia and we are helping to spread the word about the need for red blood and platelet donations. You may go to the United Blood Services website at [www.bloodhero.com/index.cfm?](http://www.bloodhero.com/index.cfm?) to schedule a replenishment donation in the name of Kellie Miner-Durkit, Phoenix Children's Hospital. Almost nine years ago, an anonymous platelet donor helped save my life during a bone marrow transplant so I can attest to how important your willingness to donate can be to patients and their families. I can't think of a greater gift.

*Serving the Valley's  
homeowner  
associations since  
1983*

*Proud to be locally  
owned and  
operated*



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## LEGISLATION REVIEW 2004

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The following is an overview of nine of the eleven bills passed and signed into law. Prior to their effective date, your manager will be provided with full text copies of each new or amended law, available for your inspection or copying upon request and further analysis will be provided.

The Second Regular Session of the Forty-sixth Legislature adjourned May 26, 2004. Several bills affecting homeowner associations have been passed and signed by the Governor. With two exceptions noted below, all bills will become effective as law

August 25, 2004.

The three bills arguably having the most significant impact on Associations are House Bills 2177 and 2379 and 2402.

*House Bill 2177* amends the respective condominium and planned community provisions relating to members' rights at Board meetings and related matters. The amended law states that Board meetings *are open to all members of the association or any person designated by the member in writing as the member's representative and all members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a member or member's designated representative to speak before the board takes formal action on the items under discussion in addition to any other opportunities to speak. The board shall provide for a reasonable number of persons to speak on each side of an issue.* In addition those matters that may be reserved for *closed session* discussion by the Board have been revised. No longer included as a matter appropriate for closed session are *pending or contemplated matters relating to enforcement of the association's documents or rules.* Unless an enforcement matter qualifies under *pending or contemplated litigation*, it is not a closed session matter.

*House Bill 2379*, effective December 31, 2004, requires that unless the Association's governing documents specifically require an audit by a CPA, all associations must provide annually, no later than 180 days after the end of the fiscal year, either a financial *audit, review, or compilation*, and that that report be made available upon request to an association member within thirty days of its completion. For purposes of comparison: an *audit* provides the highest level of assurance that a company's financial statements comply with *GAAP*, generally accepted accounting principles. An unqualified audit opinion (that is, one without caveats) expresses reasonable assurance that the financial statements contain no material misstatements, and that they are presented fairly in accordance with *GAAP*. Less extensive than an audit, but more involved than a compilation, a *review* consists primarily of analytical procedures the auditor applies to the financial statements, and various inquiries he or she makes of company management. In a *compilation*, the auditor presents information that is the "representation of management" and expresses no opinion or assurance on the statements. Compilations don't require inquiries of management or analytical procedures and are the least expensive option. Instead, the auditor relies on his or her knowledge of the accounting principles and a general understanding of the client's business. Your manager will have comparisons available well in advance of 2005 budget preparations regarding the respective costs of a financial audit, review, or compilation to assist you in determining which level of analysis to employ.

*House Bill 2402* is perhaps the most controversial and highly publicized bill introduced this session. The bill amends the provisions contained in both the Planned Community Act and Condominium Act pertaining to Association lien rights as they might apply to monetary penalties and fines related to CC&R violations and enforcement. Essentially, whereas currently most Associations' governing documents permit and are construed to allow that all charges imposed under authority of the documents are protected by the Association's assessment lien, the legislature has excepted from that protection fines and monetary penalties [and any charge or fee incidental to them] imposed in enforcement violation matters by either a planned community or condominium. If an Association imposes fines and monetary penalties, it can create a lien for those monies after obtaining a judgment and recording that judgment. That lien cannot be foreclosed as can the lien for assessments, but the monies protected by that judgment lien can be collected at a sale of the property or any other *conveyance of interest* in the property. Exclusively to condominiums, three categories additional to *monetary penalties* are also excepted: fees or charges for the use, rental or operation of the common elements; fees or charges for services provided to owners; charges for the preparation and recordation of amendments to the declaration; and statements of unpaid assessments.

*House Bill 2380* requires that *resale disclosure statements* provided by both condominiums and planned communities contain a statement to be signed by a [prospective] purchaser acknowledging that the Association's governing documents constitute a contract between the purchaser and the Association and that by accepting that contract the purchaser may be giving up rights to the homestead exemption protection regarding a lien of the association. The statement shall also include a signature line for the purchaser and *shall be returned to the association within fourteen calendar days*. KMS will provide the required statement and facilitate its return as required by the law.

*House Bill 2492* adds a second category of vehicles to ARS § 33-1809 that are exempt from an Association's restrictions on street or driveway parking. In addition to exemptions for certain vehicles used in emergency deployments related to natural gas pipelines are certain vehicles belonging to a public safety agency, including police or fire service for a federal, state, local or tribal agency, or a private fire service or a registered ambulance service provider. It is important to note that these exemptions apply only to planned communities, not to condominiums.

*House Bill 2478*, also applicable only to planned communities, not to condominiums, limits an Association's ability to restrict *political signs*. A planned community must allow indoor and outdoor displays of *political signs* beginning 45 days before an election, to be removed by 7 days after. The Association can regulate the size and number, however, but that regulation cannot be more restrictive than any applicable city, town, or county ordinance. If there is no ordinance, at least one sign must be allowed with the maximum dimensions of 24 by 24 inches. This bill is effective retroactive [from August 25<sup>th</sup>] to, from, and after July 3, 2004.

*House bill 2381* requires that if any action taken by the board of directors *would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue.* Any contract entered into in violation of that disclosure requirement would result in the contract being void and unenforceable.

*Senate Bill 1125* requires that for both condominiums and planned communities a statement be recorded with the office of the county recorder wherein the Association is located with the following information: the name of the association or designated agent or management company for the association; the address for the association and the telephone number of the association or its designated agent or management company; the name of the community (as it may differ from the Association's legal name); and the date of the recording and the recorded instrument number or book and page for the main document that constitutes the declaration. KMS will prepare and record this *notice* and *statement* on behalf of the Association, as of or prior to this law's effective date, for a nominal fee of \$25 plus applicable County recordation fee.

*Senate Bill 1137* changes ARS § 10-3304 of the Arizona Nonprofit Corporations Act, giving an individual member of the Association the right to file suit against the Association to enjoin the Association from taking a certain action on the grounds that the Association lacks or lacked power to act. Currently such an action requires approval of either ten percent or more of the voting members or by fifty members, whichever is less. This amended provision allowing an individual member to sue in this manner is unique to nonprofit corporations that are either a condominium or a planned community.

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**Did You Know...**

- There are 249,000 homeowner associations in the US representing 19.9 million housing units
- 1.25 million people serve on association boards
- 300,000 + serve as committee members
- 6 - 8,000 new associations are formed each year
- In the past 5 - 8 years, more than 4 out of 5 housing starts have been part of an association
- 15% of the value of all US residential real estate, estimated at \$2 trillion, is in association communities
- Estimated annual operating revenue for US associations is \$30 - 35 billion



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KMS Annual Summer "Beat the Heat"  
Bowling Party



Director of Landscape Ed Hargis and West Valley  
Maintenance Supervisor Luis Rosalas with the  
newest edition to the KMS Landscape fleet

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Mike Miller, Ed Hargis and Jack East of KMS  
Landscape enjoy an afternoon of bowling



Trish and New Jersey Vietnam Combat  
Veteran Walter Kudlacik at the New Jersey  
Vietnam Veterans Memorial