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Bill to exempt rec centers from law Aims to overturn court order

By Rusty Bradshaw
INDEPENDENT NEWSMEDIA

An Arizona legislator proposed a bill that would void a court ruling stating Recreation Centers of Sun City must operate under the state's Planned Communities Act.

Arizona Superior Court Judge Roger E. Brodman ruled Sept. 4, 2018 that Recreation Centers of Sun City is subject to the Arizona Planned Communities Act, ARS 33-1801. However, the judge ruled plaintiffs did not satisfy all requirements of a class action lawsuit, and that portion of the lawsuit is now in the discovery phase, according to Sun City resident **Anne Randall Stewart**, one of the lawsuit plaintiffs.

District 21 Rep. Kevin Payne (R-Peoria) sponsored House Bill 2374 amending ARS sections 33-1801 and 33-1802 that states, in part, "Association does not include an organization that is created or incorporated for the sole purpose of supporting recreational activities in a real estate development."

Mr. Payne did not return
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an email by press time requesting comment on the bill.

HB 2374 has been through the first and second readings in the House. **[The Anne Report: Not true.]**

"This bill is not good for Sun City homeowners," **Mrs. Stewart** said. "The Planned Communities Act protects homeowners from bad boards of RCSC. The RCSC boards will not be held accountable if HB 2374 is passed. It is unfair."

Despite the September judge's ruling, RCSC officials made no changes to the corporation's operation.

"We are unable to say what changes need to be made," Jan Ek, RCSC general manager, told residents during a Sept. 10 member/director exchange meeting. "We will still operate under Title 10 (of Arizona Revised Statutes), but if this ruling stands, we will have to be under the Planned Communities Act."

RCSC officials disagree with the judge's ruling, considering it a non-final ruling applicable only to the lawsuit plaintiffs, according to Joelyn Higgins, RCSC communication and marketing coordinator. RCSC officials believe the judge's interpretation is incorrect and Mr. Payne's bill is aimed at avoiding such interpretative uncertainty in the future, she added.

RCSC officials believe the Planned Communities Act jeopardizes Sun City's age-restricted character. **[The Anne Report: Not true.]**

"The Act provides that all owners, regardless of age, are 'mandatory members.'" Ms. Higgins stated in an email. "This means that RCSC would have to grant recreational-facilities access to owners under age 55, which is not what Del Webb or the legislature intended."

[The Anne Report: Not true.]

She added RCSC would also have to grant access to absentee landlords, promoting the conversion of more homes and condominiums to rental properties. RCSC officials believe this devalues owner-occupied properties in the community, according to Ms. Higgins. **[The Anne Report: Not true.]**

"RCSC does not believe such changes are in the best interests of the community," she stated.

However, Recreation Centers of Sun City West has operated under the Planned Communities Act and suffered no ill effects, according to Katy O'Grady, RCSCW general services manager.

"Title 10 governs us as an Arizona non-profit corporation designed to function as an association of homeowners," she stated in an email. "Title 33 governs planned community associations as defined in 33-1802 currently. By definition the association is a planned community association at this time."

RCSCW owns and operates the common area amenities for the benefit of residents and owners are mandatory members, Ms. O'Grady explained. Each owner member is charged a mandatory annual assessment to maintain those amenities.

"Because of this, our owners have the right to attend the board's public meetings, and we follow the open meeting requirements under the planned community statutes," Ms. O'Grady stated. "This does protect homeowners and ensures access to the board's proceedings, as well as most association records."

Sun City property owners are also assessed a mandatory annual property assessment but does have some restrictions to RCSC membership aimed at absentee property owners. Those owners who live more than 75 miles from Sun City cannot be RCSC members. While RCSC cardholders can attend the two open board meetings per month and all committee meetings, they are not allowed to attend RCSC board workshop meetings conducted directly after the member/director exchange and regular board meetings.

RCSC officials also restricts the media from attending committee meetings, while the media is allowed to attend all RCSCW meetings.

If HB 2374 is passed into law and recreation center organizations are exempt from the Planned Communities Act, there likely will be no changes in RCSCW operations, according to Ms. O'Grady.

"Eliminating the Title 33 designation would possibly remove (resident) protection and allow us to have meetings in private and keep corporate records from the view of our

members," she stated. "The Governing Board, to my knowledge, has no intent or desire to do that, but has not discussed the pending HB 2374."

She expected residents would not favor such a change.

"I can't imagine our residents would want us to discontinue following many of the provisions in the planned community statutes in Title 33," Ms. O'Grady stated. "We pride ourselves in our openness and transparency. We expect to continue openness and transparency regardless of this bill's success or failure at the Legislature."

In the Sun City residents' lawsuit last year, the judge denied a motion for the class certification portion of the suit without prejudice, which means it can be revisited. Discovery documents were not presented in arguments on that portion of the case by the plaintiffs due to a stipulation, agreed to by both parties, that discovery not be exchanged until the main motion, regarding the Planned Communities Act, was settled, according to Mrs. Stewart. RCSC then filed a motion for summary judgment on the class certification prior to the judge's decision on the main portion, she added. Mrs. Stewart said the class certification motion will be revisited after discovery is filed.

"Only reimbursement of illegal fees is needing class certification," she said. "If plaintiffs get their money returned, will others file lawsuits to get theirs back, too? If so, probably class certification will save court time."

More than 20 Sun City residents, including Mrs. Stewart, who coordinates a movement called Sun City Formula Registry, filed the lawsuit, claiming RCSC officials should be subject to the Planned Communities Act and the corporation charges fees unfairly and unequally. RCSC is a nonprofit corporation charged with maintaining recreational facilities and offering recreational and social activities for residents in the age-restricted active retirement community on unincorporated land in Maricopa County. There are about 27,000 households with a

population of about 40,000 people in the community.

The Planned Communities Act, which was instituted for homeowner protection of association abuses, according to Mrs. Stewart, also places limits on an association's ability to foreclose on a property. It may also force changes to RCSC's preservation and improvement fee, a \$3,500 charge for each property transfer.

"The (RCSC) board has established bylaws and policies that remove homeowners' rights," Mrs. Stewart said. "And the PIF is not linked to need."

RCSC officials kept their plans of future action on the case close to their vest last week.

Under the Planned Communities Act, all board and committee meetings must be open to residents and anyone designated, in writing, to be a resident's representative. Under the act, RCSC can conduct closed door meetings under five specific discussion items — legal advice; pending or contemplated litigation; personal, health or financial information; job performance, health records or compensation of employees; and a member's appeal of violation. Prior to going into a closed session, the board must identify the general nature of the discussion as defined by the five exceptions for closed meetings.

The act also has provisions designed to make association records open to members or their designated representatives.

Regarding foreclosures, the statute prohibits the association from foreclosing on a property until a year of delinquency has passed or the amount owed reach-

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Anne Randall Stewart



Joelyn Higgins



Katy O'Grady

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es or exceeds \$1,200, whichever comes first.

The statute also limits fees the association can charge for services relating to a sale of property to \$400, which can be increased up to 20 percent per year but only if the fee was less than \$400 prior to Jan. 1, 2010.

The association can also charge a rush fee of \$100 and an update fee of \$50, if either is requested or needed.

The Planned Communities Act does not have a provision for a fee equivalent to RCSC's preservation and improvement fee.

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