

RP 75-477
unrecorded

75-261

August 15, 1975

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Honorable Herbert Everett
Arizona State Representative
11454 - 114th Drive
Post Office Box 218
Youngtown, Arizona 85363

Dear Representative Everett:

I am responding to your letter of July 29, 1975, in which you requested my opinion about two matters of interest to the people of Youngtown.

I am giving you the benefit of my thoughts on these questions, but, of course, I cannot issue an official opinion because this relates to legal problems of a private nature. My position as Attorney General authorizes me only to render legal advice about the activities of the State of Arizona and its agencies.

The first question you raised had to do with Senate Bill 1272 on areas which have valid deed restrictions. The answer is that if a deed restriction imposing such restrictions is validly in force, the Arizona Residential Landlord/Tenant Act, as amended by Senate Bill 1272, legalizes discrimination by landlords against renters who have children. Prior to this amendment, A.R.S. Section 33-303 had prohibited such discrimination by landlords of residential apartments. The effect of Senate Bill 1272 is to recognize an exception to the rule when a valid deed restriction is in effect.

The second question you raised was whether those areas of Youngtown where over 51 percent of the residents signed the petitions could impose deed restrictions within their area. The answer to this question would be in the subdivision plats. An examination of the provisions contained in these plats would indicate whether individual sections could be amended by majority vote of their residents. We have previously communicated about these amendment provisions in the Youngtown subdivision deed restrictions and I would refer you to my prior remarks.

Sincerely,

Bruce E. Babbitt
Attorney General

BEB:cl



75-261

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

R-15-1177
BRUCE E. BABBITT
ATTORNEY GENERAL

December 6, 1976

Honorable Anne Lindeman
6542 West Earll Drive
Phoenix, Arizona 85033

Dear Representative Lindeman:

You have asked this office, on behalf of various senior citizen groups, for a review of the status of deed restriction enforcement as it relates to age restrictions.

As you know, the Legislature in 1975 passed two statutes designed to deal with the question. They first amended the Consumer Protection Act, A.R.S. § 44-1521.7, to include within the definition of "sale" "any real estate subject to any form of deed restrictions imposed as part of a previous sale."

The second statute, A.R.S. § 33-1317.B. is a penal provision which provides as follows:

No person shall rent or lease his property to another in violation of a valid restrictive covenant against the sale of such property to persons who have a child or children living with them nor shall a person rent or lease his property to persons who have a child or children living with them when his property lies within a subdivision which subdivision is presently designed, advertised and used as an exclusive adult subdivision. A person who rents or leases his property in violation of the provisions of this section shall be punished for the first offense by a fine of not less than one hundred nor more than five hundred dollars, and for a subsequent conviction by a fine of five hundred dollars, by imprisonment in the county jail, or both.

The amendment to the Consumer Protection Act has been of little value because the basic requirement for any action under that statute is a showing of fraud or misrepresentation. Normally,



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a person with minor children, knowingly purchasing in violation of a restrictive covenant cannot be characterized as a victim-- if anything he is more of a perpetrator of the violation. The injured parties are the other residents of the subdivision; however, their rights are more in the nature of contractual rights. It would be difficult to bring an action under the Consumer Fraud Act unless it could be shown that the developer, at the time the restrictions were recorded, intended to sell in violation of the restrictions. In many cases, that would be virtually impossible to prove.

An alternative method of enforcement is by enacting a criminal statute, as has been done with § 33-1317.B. Since that statute does not confer any enforcement jurisdiction upon the Attorney General, it can be enforced only by County Attorneys. However, I expect that, in appropriate cases, we could readily cooperate with the County Attorney who has direct jurisdiction.

The first part of 1317.B., making it a misdemeanor to rent to families with children in subdivisions with recorded deed restrictions, is clearly valid. I have communicated that view to representatives of Adult Action and other groups. They have not brought forth any specific examples of violations of this provision; presumably this underlines the effectiveness of the law as a deterrent.

Section 1317.B., however, makes no provision against the sale to persons with children who reside in a subdivision with recorded deed restrictions. Whether it was deliberate policy or an oversight that rentals and not sales were included, I do not know. However, the statute could readily be broadened to include sales in addition to rentals if you deem it desirable to do so.

The second half of 1317.B., making it a misdemeanor to rent to persons with children in subdivisions "designed, advertised and used as an exclusive adult subdivision" is presumably designed to cover those adult communities which do not have recorded deed restrictions. At the outset, there is a serious constitutional problem with any penal statute as vague and overbroad as this. More importantly, even if constitutional, it places on the prosecutor a tremendous burden of investigating and proving all the facts relating to the history and promotion of the subdivision. In the absence of the most compelling circumstances, I would certainly understand the reluctance of any County Attorney to file under this provision.

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Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce E. Babbitt".

Bruce E. Babbitt
Attorney General

BEB:cl

cc: Honorable Stan Turley
Honorable John Rhodes