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2019 Arizona Legislative Updates Affecting Commercial Real Estate and Lending (June 2019)

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The First Regular Session of the 2019 Arizona Legislature produced a number of bills affecting commercial real estate and lending that were ultimately approved by the Governor. The text of, and fact sheets and other documents regarding, a particular bill mentioned below can be found on the Arizona Legislature's website (https://www/azleg.gov/bills/). All new legislation mentioned below, unless otherwise indicated, has a general effective date of **August 27, 2019**.

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Uniform Commercial Real Estate Receivership Act (SB 1216)

Arizona foreclosure receiverships have historically been governed in patchwork fashion by a couple of general statutes [A.R.S. § 12-1241 and 12-1242], a procedural rule [Rule 66] and the receivership order issued by the Superior Court, but questions invariably lingered as to whether a broad receivership order could preempt other state laws regarding liens, debt collection remedies and foreclosure procedures.

The Uniform Commercial Real Estate Receivership Act ("UCRERA") is a national model statute that was previously enacted in Michigan, Utah, Oregon, Nevada and Tennessee; it was also introduced this year in a couple of states other than Arizona. UCRERA provides some clarity and brings more uniformity to the commercial real estate receivership process.

The Act establishes conditions under which the court may appoint a receiver, and specifies powers and duties of a receiver and of an owner, and incorporates a number of bankruptcy-like concepts. The Act applies only to a receivership for which the receiver was appointed on or after the effective date of the Act described above.

The Act applies to a receivership for an interest in commercial real property and any personal property related to or used in operating the real property, but does not apply to a receivership of an interest in real property improved by one to four dwelling units unless the dwelling units were used as part of a commercial enterprise.

Upon the entry of the order appointing a receiver, an automatic stay will go into effect prohibiting further actions or proceedings to obtain possession or control of, or enforce a judgment against, the receivership property. With court approval, a receiver may adopt, reject or assign (to the extent the owner had the power to assign) an existing contract of the owner that relates to the receivership property.

With court approval, receivers will now be permitted to sell (in either a public auction or a private sale) receivership property (including the interest of a co-owner of the property) free and clear of liens and rights of redemption of a lien of the creditor that obtained the receiver's appointment, any subordinate lien and any rights of redemption (but is subject to any liens that are senior to the lien of the person that obtained the receiver's appointment). Liens extinguished by the receiver's sale will attach to proceeds with the same priority as they had with respect to the property sold. A creditor holding a valid lien may purchase the receivership property by credit

bid, but only if the creditor tenders sufficient funds to cover the expenses of the sale.

Note that Arizona's version of the UCRERA differs from the model statute in several respects: (i) it does not include the model provision permitting the court to condition appointment of a receiver without prior notice or a prior hearing on the giving of security by the person seeking the appointment; (ii) it does not include the model provision to the effect that a court is not bound by a nomination of a receiver by the person seeking the appointment of the receiver; (iii) it does not include the model provision requirement that a claim against a receiver's bond or alternative security be made no later than 30 days after the date the receiver is discharged; (iv) it does not include the model provision to the effect that if the receiver does not request court approval to adopt or reject an executor contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract; (v) it does not include the model section relating to creditor claims against the receivership and distributions to creditors; and (vi) it does not include the model provision regarding a creditor's ability to enforce an obligation that had been secured by the lien on receivership property that is sold [*it is therefore unclear whether collection of a deficiency following a receiver's sale will be subject to a fair market value hearing or the 90-day deficiency bar date of A.R.S. § 33-814*].

Real Property Disclosure Affidavits (HB 2443, HB 2485)

Current Arizona law [A.R.S. § 33-422] requires a seller of non-subdivided land in an unincorporated area of a county to provide a buyer with an affidavit of disclosure at least seven days before the transfer of the property, and allows the buyer to rescind the sale up to five days after the affidavit is provided. The affidavit must disclosure information such as the property's accessibility, water service and whether the property is in proximity to various military related facilities or activities.

HB 2443 requires the seller to disclose whether or not the property or water used on the property is the subject of a lawsuit to determine the use and relative priority of water rights and to specify that a map of adjudicated areas can be found on the Arizona Department of Water Resources website.

HB 2485 requires the affidavit to indicate whether the property has any solar energy devices, to disclose the name and contact information of the leasing company if the solar devices are leased, and to specify that it is the buyer's responsibility to verify proper replacement or disposal methods for solar energy devices.

Tax Lien Sales (HB 2363)

On or before December 31 of each year, current Arizona law requires each County Treasurer to prepare a list of real properties owing delinquent taxes for previous years and a notice that the Treasurer will sell the tax liens on each parcel at public auction for taxes, penalties, interest and charges on the parcel. The tax lien sale is held each February.

HB 2363: (a) requires the tax lien purchaser to pay the purchase price by a date (within 15 days after the sale) set by the County Treasurer; and (b) allows the County Treasurer to prohibit a purchaser who failed to pay the amount due on a closed tax lien sale from purchasing tax liens from any county in Arizona for up to one year.

Renewal of Judgments (SB 1309)

Prior to August 3, 2018, a judgment creditor had only five years to request a writ of execution or renewal. The 2018 amendments to A.R.S. §§ 12-1551, 12-1611, 12-1612 and 12-1613 extended the five-year period to ten years. Any judgment creditor whose judgment had expired before August 3, 2018 [the effective date of the 2018 amendment] did *not* receive additional time when that legislation went into effect [see A.R.S. § 12-505(A)], but a judgment creditor whose judgment did not expire until after August 2, 2018, received an additional five years [A.R.S. § 12-505(B)].

HB 1309 provides that the ten-year limitations period to request or issue a writ of execution or renewal applies only to those judgments entered either (a) on or after August 3, 2013, or (b) on or before August 2, 2013, and renewed on or before August 2, 2018.

Satisfaction of Judgment (HB 2151)

A party who prevails in an Arizona court is generally not required to notify the court when a judgment has been paid, unless the prevailing party obtains a lien on the opposing party's real property (see A.R.S. §§ 33-961, 33-964).

HC 2151 requires a prevailing party in Superior Court to file a satisfaction of judgment within 40 days after receiving full payment, and permits the opposing party to file a motion to compel satisfaction of the judgment if the prevailing party fails to file one or cannot, with due diligence, be located. The opposing party must include with its motion an affidavit that evidences proof of payment and, if necessary, the due diligence that was performed in attempting to the prevailing party. The court is permitted to hold a hearing on the motion and require the moving party to post a bond in the amount of the judgment. The judgment is deemed satisfied if the motion is granted.

Property Tax Statements; Mortgaged Property (SB 1033)

Current Arizona law [A.R.S. § 42-18054] provides that, if the property is mortgaged and the mortgagee or the mortgagee's agent pays the tax on behalf of the mortgagor, the County Treasurer, on request, will mail a tax statement to the mortgagor and to the mortgagee. SB 1033 requires the County Treasurer to mail a written tax statement to a mortgagor's last known address (regarding of whether the mortgagor requests it) and, upon request, to the mortgagee.

Mechanics' Liens; Preliminary 20-Day Notice (SB 1304)

Arizona law requires a party to give a preliminary 20-day notice, within 20 days of first furnishing services, labor or materials, to the owner, prime contractor, construction lender and the party who hired the noticing party as a prerequisite to later recording a mechanic's lien. The notice must include an estimate of the total price of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished. A subsequent notice is required if the estimated total price for those items exceeds the total price in any prior original or subsequent notice by more than 20% [see A.R.S. § 33-992.01].

SB 1304 increases the 20% threshold to 30% before a subsequent 20-day notice is required, beginning January 1, 2020.

Condominiums; Appraisals; Termination (HB 2687)

Current Arizona law [see A.R.S. § 33-1228], which was adopted from the model Uniform Condominium Act, provides that, except in the case of taking all units by eminent domain, a condominium may be terminated only by an agreement of at least 80% (or any larger percentage the condo declaration may specify) of the unit owners in the association. The termination agreement must be recorded to become effective, and must specify the date after which the agreement will be void unless it is recorded. The termination agreement may provide that all common elements and condominium units in the condominium will be sold following termination. If any condominium real estate is to be sold following termination, the termination agreement must set forth the minimum terms of sale. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interests in the units, and the association has all powers necessary to effect the sale. Following termination of the condominium, the proceeds of the sale of real estate, together with the assets of the association, are held by the association as trustee for the unit owners and holders of liens on the units as their interests may appear. The association must distribute the proceeds of the sale to all unit owners and lienholders as their interests may appear, in proportion to their respective interests [see the following paragraph].

The respective interests of unit owners as described above are the fair market values of their units, limited common elements and common element interests immediately before the termination, as determined by an independent appraiser selected by the association. The determination of the independent appraiser must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 50% of the votes of the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the FMV of that unit owner's unit and common element interest by the total FMVs of all the units and common elements.

HC 2687: (a) requires the board of directors of the association to convene a meeting, at least 30 days before recording a termination agreement, at which a person who purports to have the agreement of at least 80% of the votes in the association to produce copies of a signed notarized statement that the owner of the unit has executed a termination agreement; (b) prohibits the board from taking action during a termination agreement board meeting by written consent or any other method that does not provide for an actual meeting that is open to all unit owners; (c) includes in the interest of a given unit owner its pro rata share of any monies in the association's reserve fund and operating account, and an additional 5% of that total amount for relocation costs [the relocation cost component is not limited to owner-occupied units]; (d) increases the amount of time the unit owners have to disapprove the appraisal from the appraiser selected by the association from 30 days to 60 days; (e) permits any unit owner to obtain a second independent appraisal at the unit owner's expense and provides that if the second appraisal differs from the association's appraisal by 5% or less, the higher appraisal

is final; (f) provides that if the second appraisal is more than 5% higher than the association's appraisal, the unit owner must submit to arbitration by an arbitrator affiliated with a national arbitration association at the condo association's expense, and the arbitration amount will be the final sale amount; (g) adds an additional 5% of the final sale amount to the appraised value for relocation costs; (h) voids any declaration that conflicts with the foregoing as a matter of public policy, beginning August 3, 2018, and (i) repeals the condominium termination legislative amendments adopted in 2018.

Vacation and Short-Term Rentals (HB 2672)

HB 2672 makes changes to a number of Arizona statutes regarding vacation and short-term rental regulations to prohibit an online lodging operator from renting out a lodging accommodation without a transaction privilege tax (TPT) license and establishes penalties for verified violations relating to vacation or short-term rental uses. The 2018 statutory amendments required online lodging marketplaces to register with the Arizona Department of Revenue (ADOR) for TPT licenses for taxes due from an online lodging operator on any transaction facilitated by the marketplace [see A.R.S. § 42-5005]. An *online lodging marketplace* is a person that provides a digital platform through which an unaffiliated third party receives compensation for renting accommodations to an occupant. An *online lodging operator* is a person who rents lodging through an online lodging marketplace [see A.R.S. § 42-5076].

A *vacation rental* or *short-term rental* is any individually or collectively owned single family or one-to-four-family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare that is also a transient public lodging establishment or owner-occupied residential home offered for transient use. Current Arizona law [see A.R.S. §§ 9 500.39 and 11-269.17] prohibits a city or county from restricting the use or regulating of vacation rentals or short-term rentals based on their classification, use or occupancy, except (i) to protect the public's health and safety, (ii) to adopt and enforce residential use and zoning ordinances, and (iii) to limit or prohibit the use of a vacation rental or short-term rental for specific purposes.

HB 2672:

1. Prohibits an online lodging operator from offering a lodging accommodation for rent or renting without a TPT license, and requires an online lodging operator to list its TPT license number on advertisements for all lodging accommodations the operator maintains, including online lodging marketplace postings.

2. Allows a local government to require the owner of a vacation or short-term rental, before offering it for rent or renting, to provide the local government with contact information for the owner or owner's designee who is responsible for responding to complaints in person, over the phone, or by email.

3. Requires a local government to notify the ADOR and the vacation or short-term rental owner, within 30 days, of a verified violation of the local government's laws, regulations or ordinances and, if the owner received the verified violation, whether the local government imposed a civil penalty on the owner and the amount of any civil penalty assessed.

4. Prohibits a vacation rental or short-term rental from being used for nonresidential purposes, including for a special event that would otherwise require a permit or license pursuant to a local government ordinance or state law or rule for retail, restaurant, banquet space or similar use.

5. Provides for civil penalties for certain verified violations.

According to media coverage, the goal of the legislation was to reign in major abusers who host parties and large events in properties that are not meant for such use. However, a provision that would have required properties to have safety and monitoring equipment to monitor and detect the level of noise and number of occupants on the property was removed from the bill because it was too controversial.

Limitation of Actions Involving Real Property Development, Design, Engineering and Construction (HB 2240)

Current Arizona law [A.R.S. § 12-552] prohibits a plaintiff from bringing a lawsuit based in contract against certain persons involved with the development or construction of real property or real property improvements more than eight years after the improvements are substantially completed. However, it does not limit a city's ability to sue a developer under its own laws, even though such laws may include provisions, such as indemnity provisions, that are sometimes found in contracts. In 2017, the Arizona Supreme Court held in *City of Phoenix v. Glenayre Electronics, Inc.*, that the eight-year statute of limitations did not apply to a claim brought by the City of Phoenix against certain developers under indemnity provisions of the Phoenix City Code and contained in permits issued by the City. The City Code requires a permit for certain construction or removal projects, and requires a

permittee to agree to indemnify the City from any lawsuit related to the permittee's actions. The Court held that the issuance of a permit does not create a written agreement for construction services, and that the City Code itself does not constitute an agreement for written services.

HB 2240 prohibits a city or county from bringing an action or arbitration against certain persons involved with the development or construction of real property or real property improvements that are dedicated to the city or county more than eight years after the improvements have been accepted by the city or county.

Purchaser Dwelling Actions (SB 1271)

Current Arizona law [A.R.S. §§ 12-1361, 12-1362, 12-1363] allows the purchaser of residential property to bring a dwelling action against a seller for any construction defects related to the seller's work, but only after following specified procedures. A *seller* is a designer, builder or seller of the property, including any *construction professional* [A.R.S. § 12-1361(10)]. A *construction professional*is an architect, contractor, subcontractor, developer, builder, builder vendor, supplier, engineer or inspector who performed or furnished the design, supervision, inspection, construction or observation of the construction of any improvements to the property [A.R.S. § 12-1361(5)]. A *construction defect* is any material deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping that is the result of a construction code violation, use of defective materials, components or equipment, or the failure to adhere to the community's generally accepted workmanship standards [A.R.S. § 12-1361(4)]. Unless the construction defect creates an immediate threat to safety, the purchaser must first notify the seller by certified mail, specifying in reasonable detail the basis for the dwelling action [see A.R.S. §§ 12-1362(A), 12-1363(A)].

The seller may then inspect the dwelling, and has 60 days from the date of notice to notify the purchaser of its intent to repair or replace, or to pay for the repair or replacement of, any of the alleged construction defects, describing in reasonable detail which defects it will repair or replace and the date by which the repairs and replacements will be made [see A.R.S. §§ 12-1363(B), (C)]. If the seller responds, the seller or its construction professional has the later of 35 days, or ten days after the receipt of any necessary building permits, to make the repair or replacement [A.R.S. § 12-1363(E)]. The purchaser may request that someone other than the original construction professional conduct the repair or replacement.

The purchaser may bring a dwelling action either (i) if the seller does not respond to the notice of defect within 60 days, or (ii) after the seller makes its intended repairs and replacements [A.R.S. §§ 12-1363(D), (E)]. A purchaser may only bring a dwelling action against a party with which it has privity, which typically prevents a purchaser from bringing an action directly against a subcontractor.

The purchaser must follow similar procedures even for construction defects identified after the original notice is sent or after commencing the dwelling action [see A.R.S. § 12-1363(H), (I)]. The statutory time periods for inspection, notice and repair may be extended by written agreement between the parties [see A.R.S. §§ 12-1363(K)].

SB 1271 provides, among other things, that:

1. The trier of fact in a dwelling action must first determine whether a construction defect exists, the amount of damages caused by the defect, and everyone who is responsible for the defect.
2. That any nonparty construction professionals who the trier of fact determines are responsible for the construction defect, if feasible, must be joined in the action as third-party defendants.
3. That the trier of fact must thereafter determine, in a bifurcated proceeding, the relative degree of fault each defendant bears for the defect (or choose not to bifurcate when the trier of fact determines that bifurcation is inappropriate).
4. The trier of fact must allocate pro rata liability based on relative degrees of default.
5. The purchaser has the burden to demonstrate that a construction defect exists, the amount of damages caused by the defect and everyone who is responsible for the defect.
6. The seller has the burden to prove the pro rata share of liability of any third-party defendant.
7. A seller who receives notice of a construction defect must forward a copy to the last known address of each construction professional the seller reasonably believes is responsible for the alleged defect (such notice may be forwarded by electronic means).
8. The purchaser's notice of construction must include the street address of each dwelling that is the subject of the notice and sufficient detail to allow the seller or its construction professional to identify the alleged

defect.

SB 1271 includes a great deal of detail regarding the respective duties of sellers, purchasers and construction professionals, and must be consulted in the case of potential dwelling actions.

Possessory Improvements; Government Property; Assessment (SB 1235)

A governmental entity owning a parcel of land may allow privately owned real property improvements (known as "improvements on possessory rights" for property tax purposes) to be built on the land. Property must be identified as either real property or personal property to be properly valued and assessed. Distinguishing between real property and personal property ensures that all property is taxed only once, either on the personal or real property tax roll. The primary characteristics that distinguish personal property from real property include the manner and extent to which the item is annexed to land or improvements, how the property is used and the intent of the property owner. Current Arizona law [A.R.S. § 42-19003] requires that improvements on possessory rights, along with other fixed property, that are located on unpatented land, state land, or a mining claim be valued as *personal* property.

SB 1235: (i) defines *possessory improvement*; (ii) requires the County Assessor to use standard appraisal methods and techniques to value possessory improvements; (iii) requires the limited property value (LPV) of possessory improvements to be calculated pursuant to statutory limitation valuation increases, and provides that the LPV of possessory improvements is not subject to the statutory exemption for personal property under A.R.S. § 42-13304; (iv) repeals statutory provisions relating to any improvement on possessory rights that is taxed as personal property; and (v) eliminates statutory references to unpatented land or state land not secured by patented real property being valued as personal property.

County Transportation Excise Tax (HB 2109)

Current Arizona law [A.R.S. § 42-6106] allows a county transportation excise tax rate of not more than 10%, with rate changes to be approved by qualified electors at a countywide election. HB 2109 allows a county transportation excise tax of no more than 20% (rather than 10%), alone or together with any tax imposed for the county transportation excise tax.

Fintech Sandbox Program Amendments (HB 2177)

Current Arizona law [A.R.S. § 41-5601 et seq.] established a regulatory sandbox program permitting limited access to the Arizona market to test innovative financial products or services without licensure or other required authorization. Subject to certain restrictions, products or services regarding most types of credit-extending services, such as peer-to-peer lending and online marketplace lending, as well as money transmission and investment management, would be eligible. Applicants for entry into the program must demonstrate that they have an adequate understanding of the innovation and a sufficient plan to test, monitor and assess the information while insuring that customers are protected from a test's failure, and the Arizona Attorney General must accept and review each application. Upon approval, the participant has two years to test its innovation.

HB 2177: (i) clarifies that a person who holds a license for a regulated financial product or service must file an application for innovations outside the scope of that license; (ii) clarifies that program participants are not subject to agency licensing requirements that would or may regulate the innovation; and (iii) allows program participants to request an increase in the cap on the permitted maximum number of consumer testers.

Property Technology Sandbox Program (HB 2673)

This bill requires the CEO of the Arizona Commerce Authority, in consultation with the Arizona Department of Real Estate and other applicable agencies, to establish a property technology sandbox program allowing persons to obtain limited access to the Arizona market to test innovative property products or services without other required authorization. This new statute can be found at A.R.S. §§ 18-601 et seq.

Zoning Hearing; Annexation (HB 2662)

When a zoning ordinance is proposed, Arizona law [A.R.S. § 9-462.04] requires the municipality to hold a public hearing with at least 15 days' prior notice in a statutorily prescribed manner. The notice must include the time and place of the hearing and a general description of the land affected by the zoning ordinance. If the planning commission or hearing officer has held a public hearing without any objection, request for public hearing or other protest, the governing body is permitted to adopt their recommendations without holding a second public hearing.

The current statute [A.R.S. § 9-471] outlines the procedures and requirements for extending and increasing the corporate limits of a municipality by annexation.

HB 2662: (a) allows the governing body of the municipality to consider the testimony of any *party aggrieved* (as defined in the bill) when making its decision on a zoning ordinance; and (b) specifies that an interested party who desires to question the validity of the annexation for failure to comply with the statute must be within the territory to be annexed.

Agency Consolidation; Department of Insurance (SB 1469)

Under current Arizona law [A.R.S. § 6-110], the Department of Financial Institutions is in charge of executing the laws of Arizona relating to financial institutions and enterprises. SB 1469 consolidates the Department of Financial Institutions, the Arizona Automobile Theft Authority and the Arizona Department of Insurance into a single *Department of Insurance and Financial Institutions* with the expectation that the consolidation will produce some efficiencies.

Real Estate Licensure Exceptions (HB 2451)

Current Arizona law [A.R.S. § 32-2122] requires any person or corporation engaging in any business, occupation or activity as a real estate broker or salesperson to obtain an appropriate license from the Department of Real Estate. Current Arizona law [A.R.S. § 32-2121] also exempts various persons from licensure, including persons who, on behalf of another, solicit, arrange or accept reservations or monies for occupancies of 31 or fewer days in a dwelling unit in a common interest development. HB 2451 removes the statutory reference to a “common interest development” (which was not defined) and cleans up the language of several of the exemptions (including an attorney performing his or her duties as an attorney).

Beneficiary Deeds; Separate Property (SB 1218)

Current Arizona law [A.R.S. § 33-405] permits a conveyance of an interest in real property by a beneficiary deed to one or more grantee beneficiaries designated by the owner; the beneficiary deed expressly states that it is effective on the death of the owner, subject to all conveyances, liens and other encumbrances made by the owner. If the beneficiary deed designates multiple grantees, they may take title as joint tenants with right of survivorship, tenants in common, community property (if spouses) or any other tenancy.

SB 1218: (a) specifies that the interest in real property conveyed by a beneficiary deed is *separate property* of the named grantee beneficiary and not community property, unless otherwise stated in the beneficiary deed; and (b) provides that, if none of the grantee beneficiaries named in the beneficiary deed survives the owner, the beneficiary deed is void.

Real Estate Appraisal (SB 1333)

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) authorized the Appraisal Foundation as the sole source of appraisal standards and qualifications. The Appraisals Standards Board under the Appraisal Foundation is responsible for writing, amending and interpreting the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP is the generally recognized ethical and performance standard for the appraisal profession and contains the standards for all types of appraisal services.

SB 1333 redefines “standards of professional appraisal practice” [as referenced in A.R.S. § 32-3601] as USPAP as promulgated by the Appraisal Standards Board of the Appraisal Foundation, rather than standards adopted by the Superintendent of the Arizona Department of Financial Institutions.

Residential Rental TPT (HB 2445)

Current Arizona law [A.R.S. § 42-6011] requires cities to obtain voter approval for new taxes (including transaction privilege, sales, gross receipts, use, franchise, or similar taxes or fees) or an increase to existent taxes on residential rental properties. The statute does not apply to facilities used for health care, long-term care or transient lodging businesses such as hotels and motels. Cities are not currently required to notify *owners* of residential rental properties of new taxes or an increase to existing taxes approved by voters.

HB 2445 requires cities to notify (by first class mail) each residential TPT licensee who is licensed with the ADOR and each individual residential rental property of a new or increased rate at least 60 days before the effective date of the new or increased tax rate.

Remote Online Notarization and Registration (SB 1030)

Current Arizona law [A.R.S. § 41-319] requires a notary public to keep a paper journal, and to keep only one journal at a time unless one or more entries in the notary public's journal are not public records. If one or more entries in a journal are not public record, then there may be one journal that contains entries that are not public records and one that contains entries that are public records.

SB 1030: (a) provides that if a notary public keeps only one journal, that journal is presumed to be a public record; (b) provides that if more than one entry in a journal is not a public record, then one journal shall contain entries that are not public records and one journal shall contain entries that are public records; (c) requires the Arizona Secretary of State (AZ SOS), on or before July 1, 2020, to adopt rules to facilitate remote online notarizations, which rules must include sufficient forms of notarial certificates for remote online notarizations and standards for applications and registration, communication technology, credential analysis, identity proofing and retention of audio and visual recordings required by this bill; (d) authorizes a notary public who is physically located in Arizona and who is authorized by the AZ SOS to perform remote online notarizations to perform a notarial act by means of communication technology for a remotely located individual who is physically located within the US (including Arizona), or outside the US if the electronic record is to be filed with or relates to a matter before a court, government entity, public official or other entity subject to the US or involves property that is located in the territorial jurisdiction of the US or a transaction substantially connected to the US; (e) requires a notary public to record each remote online notarial act performed by the notary public in chronological order in one or more journals maintained in a permanent, tamper-evident electronic format that complies with rules issued by the AZ SOS; (f) prohibits a notary public from recording a remote online notarial act in a paper journal; (g) specifies the content that a journal entry must include; (h) requires a notary public, or a person acting on behalf of the notary public, to create an audio and visual recording of the performance of each remote online notarial act; (i) requires the notary public to take reasonable steps to insure the integrity of remote online notarizations, maintain a backup of the audio and visual recording required and an electronic journal kept by the notary public, and protect the required backup from unauthorized use; (j) requires the notary public or an agent or representative thereof to retain an electronic journal and audio and visual recording for at least five years after the date of the remote online notarial act; (k) requires a notary public to attach or logically associate the notary public's electronic signature and electronic seal to the notarial certificate in a tamper-evident format; (l) requires that the electronic seal be capable of being copied together with the electronic record to which it is attached or with which it is logically associated; (m) requires that the notarial certificate be attached to or logically associated with the electronic record that is the subject of the remote online notarial act; (n) provides that a notary public's use of an electronic seal satisfies legal requirements relating to the authentication of the official seal of all official acts on every certificate or acknowledgment signed and sealed by the notary; (o) prohibits a notary public from allowing another person to use the notary public's electronic seal; (p) requires the notary public, before performing a remote online notarization, to reasonably confirm that an electronic record before the notary public is the same electronic record in which the remotely located individual made a statement or on which the remotely located individual executed or adopted a signature, and to take reasonable steps to insure that the communication technology used in the remote online notarization is secure from unauthorized interception; (q) provides options by which a notary public can verify the identity of an individual; (r) requires the notarial certificate for a remote online notarization to indicate that the notarial act was a remote online notarization performed by means of communication technology; (s) provides that a remote online notarization satisfies any Arizona law that requires an individual to appear personally before or be in the presence of a notary public at the time of the performance of a notarial act; (t) allows an aggrieved person to seek to invalidate the electronic record or transaction that is the subject of the remote online notarial act or seek other remedies based on state or federal law; (u) provides that the validity of a remote online notarization is determined by Arizona law regardless of the physical location of the remotely located individual at the time of the remote online notarization; and (v) is effective from and after June 30, 2020.

HOAs, Costs and Assessments (SB 1531)

Current Arizona law allows an HOA to impose a lien for assessments, including late charges and collection costs, and to foreclose the lien in the same manner as a real estate mortgage. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due (see A.R.S. §§ 33-1256, 33-1807).

SB 1531 provides, among other things, that an HOA lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within **six** years after the full amount of the assessment becomes due.

Registrar of Contractors Omnibus (SB 1397)

This new bill makes various changes to provisions regarding the Registrar of Contractors and the Residential Contractors' Recovery Fund administered by the ROC. The changes deal with residential real property and residential contractors.