



# Carpenter Hazlewood Delgado & Wood E-Newsletter

## Does Proposition 100 Prohibit Transfer Fees? by Scott B. Carpenter, Esq.

### Our New E-Newsletter

We look forward to sending you informative and timely articles about community association legal issues. We hope these are helpful tools when you face challenging issues in your neighborhood.

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With the passage of Proposition 100 on November 4, 2008, several clients have asked, "Does this prohibit our association from charging assessments on resale?"

By way of background, Proposition 100 amends the Arizona Constitution by adding a new Article IX, Section 24. The new section states (with words that clearly do not apply to community associations omitted):

...Any district created by law with authority to impose...[an] assessment, shall not impose any new...assessment, direct or indirect, on the act or privilege of selling, purchasing, granting, assigning, transferring, receiving, or otherwise conveying any interest in real property. This section does not apply to any...assessment in existence on December 31, 2007.

It is clear from the advertising and propaganda that the backers of Proposition 100 were entirely focused on governmental taxes. See their website at [www.protectourhomes.com](http://www.protectourhomes.com). The potential applicability of Proposition 100 to community associations centers on the following words: "**District created by law.**" Is a condominium or planned community a "District created by law?" In the context of the Proposition, it is unlikely that a community association created by CC&Rs would be interpreted legally to be a "District". But there is an argument to be made. After Proposition 100, there are a number of fees that are safe:

1. "Transfer fees" that compensate the community association or the management company for the work involved in facilitating the transfer.
2. "Resale Disclosure Fees" that compensate the community association or the management company for the work involved in the pre-sale disclosure package.
3. Assessments due on sale that were in place on December 31, 2007 are safe. Examples include "working capital", "community enhancement", "community facilities fees", and other descriptions of assessments due on sale that go to the Association's general funds or reserves.

The only potential applicability of Proposition 100 to community associations would be for those associations that contemplate new "assessments due on sale" that would take effect in the future. Any community association contemplating amending the governing documents to create a new "assessment due on sale" should consult with its community association attorney on what impact, if any, Proposition 100 will have on a new "assessment due on sale" requirement.

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