



2012 Legislative Update

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MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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2012 ARIZONA LEGISLATIVE UPDATE REGARDING COMMUNITY ASSOCIATIONS

The 2012 Arizona legislative session (Fiftieth Legislature, Second Regular Session) adjourned on May 3, 2012. This year, only two bills passed that will affect planned communities and condominiums. This Cheat Sheet replaces an earlier version dated May 2012 due to Arizona's Legislative Council correcting a numbering problem that created an ambiguity in SB 1476.

These new bills will go into effect and become law on August 2, 2012.

SUMMARY OF SENATE BILL 1476 - RESALE DISCLOSURE & ARC/DESIGN REVIEW

Changes to the Composition of Architectural Committee, Security Deposits and ARC/DRC Review Process: This portion of SB1476 affects planned communities only and trumps an association's documents.

1. A Board Member Must Now Chair ARC/DRC: Membership on an architectural review committee, a design review committee or a committee that performs similar functions, however denominated shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. Use of Security Deposits for New Construction and Rebuilds of the Main Residential Structure: For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, if the association documents permit the association to charge the member a security deposit and if the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, the deposit shall be placed in a trust account with the following instructions*:

- a. The cost of the trust account shall be shared equally between the association and the member;
- b. If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies; and
- c. Any interest earned on the refundable security deposit shall become part of the security deposit.

*The legislature did not specify that a separate bank account must be set up for this purpose. However, it is our firm's position that best practices dictate that security deposits collected pursuant to this section be placed in a separate bank (trust) account.

3. New Requirements for Architectural/Design Review Process for New Construction and Rebuilds of the Main Residential Structure: For new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, the following is required:

(a) **Final Design Approval Meeting:** The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative must provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(b) **Two On-Site Formal Reviews/Written Report:** The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent must be provided the opportunity to attend both formal reviews. *Within five business days after the formal reviews*, the association must cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans as amended and that have come to the attention of the association.

(c) **Written Report After Second Formal Review/Release of Deposit Money:** *Within thirty business days after the second formal review*, the association shall provide to the member, a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans as amended that have come to the attention of the association. If the written report does not specify any deficiencies, violations or

SUMMARY OF SB 1476 CONTINUED

unapproved variations from the approved plans, as amended, that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(d) No Representation or Warranty that Plans or Construction Complies with Governmental Requirements or Standards: Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

SB1476 also amends A.R.S. 33-1260, 33-1806 and creates A.R.S. 33-1817.

Resale Disclosure Statement/Escrow Agent: This portion of SB1476 affects planned communities and condominiums. The bill excludes the escrow agent from the definition of 'unit owner' under A.R.S. 33-1260 and A.R.S. 33-1806.

Impact on Community Associations:

In our firm's opinion, the sections above pertaining to composition of the ARC/DRC and the use of security deposits (see 1-2 above) are easy to understand and are self-explanatory.

With regard to Section 3 above, the ARC/DRC has tedious and burdensome new ARC requirements for new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot in a planned community that has enacted design guidelines, architectural guidelines or other similar rules (such as a final design approval meeting, two on-site formal reviews during construction, generating written reports after the reviews and guidelines for releasing security deposit monies).

Clarification Questions Commonly Asked Regarding SB 1476:

- 1. Do the requirements of Section 3 above apply to changes by owners that do not fall under the categories of new construction of the main residential structure on a lot or for rebuilds of the main residential structure on a lot?** *Answer: No*
- 2. How do we define "rebuild of the main residential structure on a lot"?** *Answer: The Arizona legislature did not define this term in SB 1476. Webster's Dictionary defines "rebuild" as "to make extensive repairs to; to reconstruct; to make extensive changes in; and to build again." Each DRC/ARC application needs to be evaluated as to whether or not the proposed changes to the main residential structure fall under these categories.*
- 3. If our association has not enacted design guidelines, architectural guidelines or other similar rules do we still have to comply with Section 3 of SB 1476 above?** *Answer: Maybe. It depends on whether other association's documents (CC&Rs, Rules, etc.) have architectural restrictions in place (such as the requirement to obtain architectural review, etc.). It is safest to seek legal advice from your association's legal counsel if you are unsure as to whether or not Section 3 applies to any request received.*

SUMMARY OF HB 2471 - SIGNS, CONFLICTING ENACTMENTS

HB 2471 amends A.R.S. 33-1261 and 33-1808.

1. Grammatical Changes in Condominium Act: First, HB 2471 makes some minor grammatical changes to the Condominium Act (33-1261) pertaining to for sale, for rent or for lease signs or sign riders.

2. Political Signs in a Planned Community: HB 2471 also addresses political signs.

(a) If the city, town or county in which the planned community is located *does not* regulate the size and number of political signs on residential property, the association shall not limit the number of political signs allowed so long as the aggregate total dimensions of all political signs do not exceed nine square feet.

(b) This bill also states a planned community shall not prohibit the indoor or outdoor display of a political sign by an owner on that owner's property, except that an association may prohibit the display of political signs earlier than seventy-one days before the day of an election and later than three days after an election day. This bill repeals prior legislation that contained conflicting enactments regarding the placement of political signs.

3. For Sale, For Rent and For Lease Signs in a Planned Community: Finally, pursuant to HB 2471 an association shall not prohibit or charge a fee for the use of, placement of or the indoor or outdoor display of a for sale, for rent or for lease sign and sign rider by an association member on that member's property in any combination. An association may prohibit the use of signs that are not commercially produced. An association or managing agent violating this section extinguishes their lien rights against that member's property for a period of six consecutive months from the date of the violation.