



2009 Legislative Update

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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2009 ARIZONA LEGISLATIVE UPDATE REGARDING COMMUNITY ASSOCIATIONS

The 2009 Arizona legislative session (49th Legislature, First Regular Session) was an unusual and exciting session for everyone but the community association industry. This year, the legislature focused mainly on budget bills and balancing the State's budget. There was quite a bit of "legislative drama" this year, including Governor Brewer filing a special action with the Arizona Supreme Court arguing that the Legislature violated the State Constitution and an "all night" budget scramble on June 30, 2009!

The only "community association related" bill that passed during the 2009 Arizona legislative session was Senate Bill 1148 (creating A.R.S. Section 33-441), which closed a loophole with regard to the display of "for sale" signs in deed restricted communities that are not planned communities or condominiums.

In 2007, the Arizona legislature enacted two new laws (A.R.S. Sections 33-1261 and 33-1808) which applied only to condominiums and planned communities. A.R.S. Sections 33-1261 and 33-1808 allowed owners in condominiums and planned communities to place a "for sale" sign (and a sign rider) on that owner's property after certain restrictions were met.

SB1148 mirrors these 2007 laws in many aspects, but it expands the right to display a "for sale" sign on deed restricted property that is neither a condominium nor a planned community. For example, many older associations in Arizona have deed restrictions, but they don't fall under the legal definition of a planned community or condominium. These older, deed-restricted associations were still able to prohibit the display of "for sale" signs despite the new laws implemented in 2007 since they were not technically, legally a condominium or a planned community. **The bottom line is now, after the passage of SB 1148, all associations in Arizona (whether they are planned communities, condominiums or neither) with deed restrictions on their property must allow a "for sale" sign on that owner's property after certain restrictions are met.**

SUMMARY OF SENATE BILL 1148 CREATING A.R.S. SECTION 33-441

- 1) No covenant, restriction or condition contained in any deed, contract, security agreement or other instrument affecting the transfer or sale of any interest in real property shall be applied to prohibit the indoor or outdoor display of a for sale sign and a sign rider by a property owner on that person's property, including a sign that indicates the person is offering the property for sale by owner.
- 2) The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches.

It is important to note that this new law applies to any covenant, restriction or condition without regard to the date the covenant; restriction or condition was created, signed or recorded. However, this law does not apply to timeshare property and timeshare interest as defined in A.R.S. Section 33-2202. Finally, this law does not apply to a covenant, restriction or condition in a deed, contract, security agreement or other instrument affecting the transfer or sale of an interest in real property that does not prohibit or restrict the display of a for sale sign or a sign rider on the real property.

SENATE BILL 1148 BECOMES LAW ON SEPTEMBER 30, 2009

Governor Brewer signed Senate Bill 1148 into law on July 10, 2009 and this new law will go into effect September 30, 2009. To see a full copy of the text of this new law, go to www.mulcahylaw.net click on the publications tab and then under the "Legislative Updates" heading, click on Senate Bill 1148.

2009 COMMUNITY ASSOCIATION BILLS INTRODUCED, *BUT NOT PASSED*

It is always a good idea to review what bills did not pass after a legislative session ends because it is very likely that the same bills will be re-introduced in 2010 when the legislature convenes again.

The following bills were introduced but *not passed*:

- The Declarant's voting rights for members of the board;
- The association's authority over roadways, easements or other areas under the ownership of a legal entity;
- The association's inability to prohibit the installation or use of solar screens and shade structures;
- Unanimous voting for specific amendments to the association's declaration;
- Electronic filing with the Arizona Corporation Commission;
- Association registration with the secretary of state;
- The amendment process for a sub-community in a master community association;
- The process for initiative petitions;
- Accommodation of amateur radio station emergency communications antennae and structures;
- Installation and use of rainwater catchments or cistern systems;
- Installation and use of energy saving devices;
- The process in which a writ of garnishment is served;
- An owner's ability to opt out of the mandatory membership in the planned community; and
- The parameters under which a political sign can be placed outside of a unit.

Overall, it was a very slow year for association-related bills. Frankly, this was a much-needed break since the past ten years have been quite active for our industry!

ARIZONA REVISED STATUTES REGARDING COMMUNITY ASSOCIATIONS

www.azleg.gov – To access Arizona Revised Statutes (A.R.S.) online.

When you have reached the home page, select "Arizona Revised Statutes" at the side of the page under "General Information". Scroll down the new page to the title you want to search, select and click on the actual title (i.e. title 33) to have the title open. The chapters, articles and sections follow, each listed respectively in numerical order. Alternately, you can choose to do a phrase search by following the instructions on the page. You can also find A.R.S. information on the MULCAHY website located at www.mulcahylawfirm.net.

The following Arizona state statutes may govern your community association:

Title: 10 Corporations and Associations

Chapter: 24 General Provisions – Non Profit Corporations, A.R.S. Sections 10-3101 - 10-11635

Operation and governance of non-profit corporations are detailed in this Act. The provisions of the Non-Profit Act apply only if the articles of incorporation or bylaws of the association are silent.

Title: 33 Property

Chapter: 9 Condominiums, A.R.S. Sections 33-1201 - 33-1270

Defines the creation, management and termination of the condominium, monetary penalties, resale disclosure, liens and open meetings, etc.

Chapter: 16 Planned Communities, A.R.S. Sections 33-1801 - 33-1816

Defines a planned community association, assessments, open meetings, disclosure of association records, and penalties, etc.

Title: 41 Executive Officers

Chapter: 16 Department of Fire, Building and Life Safety, Article 5: Administrative Hearings A.R.S. Sections 41-2198 - 41-2198.05

Defines procedures for administrative law judges to adjudicate complaints regarding condominiums and planned communities.

Not on-line?

Most libraries have computers and will help you with a search or they may have the Arizona Revised Statutes in bound editions. If you want to research the bound editions, please call the library you want to use to be sure that they are available. The Phoenix Public Library, located on Central Avenue has the current Arizona Revised Statutes.