



## 2010 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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#### Summary of 2010 HOA Bills Signed by Governor Brewer

The Arizona 49th Legislature, 2nd Regular session ended on Thursday, April 29, 2010. During this session, the legislature passed and Governor Brewer signed three bills that will directly affect planned communities and condominium associations.

*These three laws become effective on July 29, 2010.*

#### Summary of House Bill 2345 – Open House / For Sale, For Lease and Open House Signs (amending A.R.S. Sections 33-1261 and 33-1808)

**Open House Hours:** Associations must allow open house houses for real estate that is for sale or for lease within the association between the hours of 8:00 a.m. and 6:00 p.m.

**Open House Signs:** Associations can prohibit open house signs on association common areas/elements. Associations must allow temporary open house signs on that owner's property. The association cannot require the use of a particular open house sign and may not further regulate the use of open house signs that are industry standard size and that are owned or used by the seller or the seller's agent.

**For Lease Signs:** Associations must allow an owner's or an owner's agent's for lease sign on that owner's property unless an association's documents prohibit or restrict leasing of a unit or units. Associations shall not further regulate a for lease sign or require the use of a particular for lease sign other than the for lease sign shall not be any larger than the industry standard size sign (18 x 24 inches) and on or in that owner's property.

**For Sale Signs:** An association must allow the indoor or outdoor display of an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) on or in that owner's property. The association cannot require the use of a particular for sale sign and may not further regulate the use of for sale signs that are owned or used by the seller or the seller's agent.

It is important to note that HB 2345 trumps an association's documents with any provisions that conflict with HB 2345.

#### Summary of House Bill 2768 – Transfer Fees (creating A.R.S. Sections 33-442)

In our firm's opinion, HB 2768 is one of the most confusing and complicated laws ever passed regarding community associations. Set forth below is our firm's interpretation of HB 2768.

**Transfer Fees:** An association can charge a transfer fee, capital contribution fee or reserve assessment fee that becomes due at a close of escrow when the following requirements are met:

1. the governing documents (typically the CC&Rs) grant authority for the fee and provides for a specified purpose for the assessment;
2. the fee being charged touches and concerns the land; and
3. the fee does not go to a third party (such as a management company) or developer unless the third party or developer is authorized in the governing documents (CC&Rs) to manage the real property within the association or was part of an approved development plan.

This new law means that associations can continue to charge a transfer fee, capital contribution fee or reserve assessment fee that becomes due at a close of escrow when:

1. the CC&Rs specifically allow this type of fee; and
2. the fee is paid to the association, management company or developer which is authorized in the CC&Rs to manage real property within the association or was part of an approved development plan.

Further, HB 2768 also allows an association to charge any fee or charge that is imposed by a document and that is payable to a non-profit *corporation* (note: most associations in Arizona are non-profit corporations) for the sole purpose of supporting recreational activities within the association.

#### Can associations continue to charge Resale Disclosure Fees?

Yes. HB 2768 does not affect an association's ability to charge a "resale disclosure fee" pursuant to A.R.S. Sections 33-1260(C) or 33-1806(C).

**Can associations continue to charge transfer fees pursuant to the Arizona Non-Profit Corporation Act when an association's CC&Rs do not authorize a transfer fee?**

Yes. In our firm's opinion, HB 2768 does not affect an association's ability to charge a "transfer fee" pursuant to the Arizona Non-Profit Corporation Act [A.R.S. Section 10-3302(16)] when the transfer fee is consistent with the cost to transfer membership from one owner to another owner. Our firm suggests that a transfer fee pursuant to this section not exceed \$500.

**HB2334 DOCUMENT COST RECOVERY - AMENDS A.R.S. 12-332**

HB2334 permits a court to award to the prevailing party, the cost of document preparation if:

1. The document was prepared by a certified preparer by the Supreme Court; and
2. The party seeking recovery filed a sworn affidavit of costs.

**HOW A BILL BECOMES A LAW**

**A bill is introduced in the House by a Member, a group of Members, a Standing Committee or a Majority of a Committee, after being written in proper form by the Legislative Council.**

The bill is assigned a number, First Read and referred by the Speaker to the appropriate Standing Committees and to the Chief Clerk for printing and distribution.

Committees consider the bill, which may include hearings, expert testimony and statements from the citizenry, and report recommendations to the Whole House. The Committee on Rules determines if the bill is constitutional and in proper form.

The Committee on Rules places the bill on the Active Calendar and the Speaker sets the order in which measures will be considered.

The Committee of the Whole, the informal session of entire House membership acting as one committee, debate, amend and recommend on the calendared bills.

Third Reading House-Roll Call. Every Member present must vote (unless excused) and no Member may vote for another Member. If passed by the House, the bill goes on to the Senate.

**The House Bill is First Read in the Senate and laid over one day.**

The bill receives its Second Reading and the President refers it to appropriate Standing Committees.

Standing Committees consider the bill, which may include hearings, expert testimony, and statements from the citizenry and the Committee reports their recommendations to the entire Senate.

The Committee on Rules' agenda becomes the calendar for Committee of the Whole and after 5 days the President designates which measures are to be placed on the Active Calendar of the Committee of the Whole.

The Committee of the Whole, the entire membership of the Senate acting as one committee, debates the amendments and recommendations on the calendared bill.

Third Reading Senate - Names are called alphabetically and unless excused, each Senator present must vote on each measure. If passed by the Senate (either in identical form or amended) the bill is sent back to the house. If the bill is identical to the measure passed by the house, the bill goes to the Governor.

If the bill comes back to the house amended, in a different form, the bill may be accepted in its new form and sent to the Governor, or the bill may be rejected and sent to a Conference Committee.

A Conference Committee is made up of Representatives appointed by the Speaker of the House and Senators appointed by the President of the Senate. In Conference committee the bill is discussed and "mended" to come to a compromise. The committee creates a Conference Committee Report that is sent back to each House for adoption and after Final Passage, the bill is sent to the Governor.

**When the bill reaches the Governor, the bill has been passed by both the House and the Senate and may now be signed by the Governor.** The Governor may allow the bill to become law without a signature if he/she takes no action within five days, or ten days after adjournment. If this happens the bill becomes effective ninety days after adjournment of the legislature.

If the Governor vetoes the bill, it is returned to the House stating the reasons for the veto. The House and Senate may then override the Governor's veto by a two thirds vote or three-fourths in the case of an emergency measure.

*Information taken from [www.azleg.gov](http://www.azleg.gov), Bill to Law.*