



2013 Legislative Update

Senate Bill 1278
Senate Bill 1302
Senate Bill 1454

MULCAHY Community Association Cheat Sheet®

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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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Arizona 2013 Legislative Update Regarding Community Associations

The 2013 Arizona Legislative Session (51st Legislature, First Regular Session) adjourned on June 14, 2013. Similar to prior years, there were numerous bills pertaining to planned communities and condominiums regarding a wide range of subjects. This year, three bills pertaining to planned communities passed both legislative chambers and were signed by the Governor. Each bill has a different effective date as indicated below.

Summary of SB1278 - Parking and Towing

Creating A.R.S. Section 33-1818 - Parking on Streets

This new law applies only to planned communities for which the declaration is recorded after December 31, 2014.

After the period of declarant (developer) control, an association has no authority over and cannot regulate any roadway for which the ownership has been dedicated to or is otherwise held by governmental entities. This new law trumps an association's documents.

Impact on Community Associations:

Three things must be present for this new law to apply to a planned community: (1) the period of developer control for that association must have expired; (2) the planned community must have streets or roadways that are owned by a governmental entity (such as a city, town or municipality) and (3) the declaration is recorded after December 31, 2014. (The new law is not clear as to whether or not this law would also apply to any planned community that records an amendment to a declaration after December 31, 2014).

If all three of these elements are met, then, the planned community cannot regulate any street or roadway in its community. This means that associations that fall in this category will NOT be able to regulate (pass rules or enforce provisions in its CC&Rs), fine or tow owners or their guests for parking or storage of motor vehicles, RVs, boats, etc. on roadways or streets.

The governmental entity (city, town or municipality) that the association is located in will be able to regulate the Association's streets according to its respective codes or ordinances. However, it is important to note that most governmental entities have less stringent parking codes or ordinances than planned community CC&Rs and Rules.

Summary of SB1302 - Architectural

Amending A.R.S. Section 33-1817, becomes law on September 13, 2013

This new law applies to planned communities only and trumps an association's documents. This law makes a minor technical change and clarifies that the cumbersome design review restrictions (placed on a planned community for new construction of the main residential structure or for rebuilds of the main residential structure on a lot) ONLY apply when a planned community charges a security deposit for the project to secure completion of the member's construction project or compliance with approved plans.

Clarification of Requirements for Architectural/Design Review Process for New Construction or Rebuilds of the Main Residential Structure

If the following two criteria are met, then the following is required:

1. 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; AND

2. 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, all of the following apply:

- (a) The deposit shall be placed in a trust account with the following instructions*:
1. The cost of the trust account shall be shared equally between the association and the member;
 2. If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies; and
 3. 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.

- (b) New Requirements for Architectural/Design Review Process for New Construction or Rebuilds of the Main Residential Structure: For new construction of the main

Summary of SB1302 - Architectural continued

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:

1. 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.
2. 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 that have come to the attention of the association.
3. 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 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.
4. 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.

Clarification of Questions Commonly Asked Regarding SB1302

1. Do the requirements of Section (b) 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 1302. 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's documents DO NOT permit the association to charge the member a security deposit or our association chooses not to collect a security deposit to secure completion of the member's construction project or compliance with approved plans do we still have to comply with Section (b) of SB 1302 above? *Answer: NO.*

Summary of SB1454 - Political Signs in Condominiums

Amending A.R.S. 33-1261

This portion of the new law only applies to condominiums and mirrors a similar provision in the planned community act regarding political signs.

Impact on Condominiums:

Regardless of what the condominium documents state, the association shall not prohibit the indoor or outdoor display of a political sign by a unit owner by placement of a sign in the common element ground that is adjacent to the unit, or on that unit owner's property, including any limited common elements for that unit, except as follows:

1. 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;
2. An association may regulate political signs if the association's regulation is no more restrictive than any applicable city, town, or ordinance that regulates the size and number of political signs on residential property.
3. If the city, town or county which the property is located does not regulate the size and number of political signs on residential property, the association shall not limit the number of signs, except that the maximum aggregate total dimensions of all signs on a unit owner's property shall not exceed nine square feet.